[redacted]

[redacted]

CATV: 21’4”

AT&T: 20’8”

Date Taken: April 8, 2019

[redacted]

[redacted]

Street Light: 24’2”

CATV: 20’10”

ATT: 19’6”

Date Taken: April 9, 2019

Exhibit C

Before the
Federal Communications Commission
Washington, DC 20554

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T ALABAMA, Complainant, v. ALABAMA POWER COMPANY, Defendant.	Proceeding No. 19-___ Bureau ID No. EB-19-MD-___

AFFIDAVIT OF MARK PETERS
IN SUPPORT OF POLE ATTACHMENT COMPLAINT

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

I, Mark Peters, being sworn, depose and say:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant BellSouth Telecommunications, LLC d/b/a AT&T Alabama ("AT&T"). I am executing this Affidavit in support of AT&T's Pole Attachment Complaint against Alabama Power Company ("Alabama Power"). I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath. I reserve the right to supplement or revise this Affidavit as additional information becomes available.

2. My job title is Area Manager – Regulatory Relations. My current responsibilities include supporting various AT&T-affiliated entities with respect to regulatory, legislative, or contractual matters involving joint use, utility poles, conduit, and ducts. I am familiar with AT&T's Joint Use Agreement with Alabama Power ("JUA"), support AT&T's administration of

the JUA, and participated by telephone in AT&T's second executive-level meeting with Alabama Power for a just and reasonable pole attachment rate.

3. I have over 20 years of experience with AT&T-affiliated entities, which I'll refer to collectively as the "Company." My employment with the Company began in 1998, when I was hired by Southwestern Bell Telephone Company as a Systems Technician. From 2000 to 2002, I filled engineering roles to support digital loop carrier and fiber multiplexer installations. I subsequently joined the national staff for the Construction and Engineering department, working initially on application development as a business client representative and, in 2009, I became the first national subject matter expert on issues relating to the Company's joint use relationships with electric companies. In this capacity, I supported the negotiation and revision of new and replacement joint use agreements and amendments, assisted in the implementation and administration of joint use agreements, provided input on proposed legislation concerning pole attachments, and helped establish joint use operational standards for the Company's incumbent local exchange carriers ("ILECs"). I continue to provide this joint use support in my current position, which I assumed in 2013. I also provide support on matters relating to third-party access to Company-owned utility poles and conduit, including the negotiation and implementation of license agreements with third parties attached to Company-owned poles and conduit.

4. I am also a Senior Master Sergeant in the U.S. Air Force Reserves. My military career began after high school, when I served in active duty in the U.S. Air Force for 10 years. I was honorably discharged at the rank of Staff Sergeant. I have Associates Degrees in Applied Science, Information Technology and Networking, from Tarrant County College and in Applied Science, Transportation Logistics, from the Community College of the Air Force.

5. Over the course of my career, I have reviewed several hundred pole attachment agreements, including joint use agreements and license agreements. I am aware of the terms and conditions that typically apply to cable companies and CLECs that attach to poles owned by ILECs and investor-owned utilities. My knowledge also includes the practices and procedures surrounding the joint use of utility poles, including poles in AT&T's overlapping service area with Alabama Power.

6. Based on my familiarity with joint use and license agreements, I expected that AT&T should pay the same pole attachment rate as its CLEC and cable competitors because the JUA does not include more advantageous terms and conditions for AT&T than generally apply to CLECs and cable companies. My review of the two license agreements that Alabama Power provided AT&T in July 2018[1] confirmed my expectation that the JUA does not give AT&T a net material advantage over cable companies and CLECs with respect to the attachment and maintenance of facilities on Alabama Power's utility poles, and certainly does not justify the exceptionally high pole attachment rates that Alabama Power charges AT&T.

7. When Alabama Power provided its license agreements, it claimed that they show that AT&T receives "obvious and significant benefits" under the JUA.[2] I disagree. Each so-called benefit in Alabama Power's list is not a benefit at all.

8. As an initial matter, with just one exception (AT&T's position on the pole), Alabama Power relies entirely on terms in the JUA that are reciprocal, meaning that AT&T must extend the same terms to Alabama Power for its use of AT&T's poles. By contrast, Alabama Power's license agreements do not impose reciprocal obligations on AT&T's competitors, and so

[1] *See* Compl. Exs. 2, 3 at ATT00120-194.

[2] *See* Compl. Ex. 13 at ATT00260.

this is a significant difference between the costs and obligations imposed on AT&T as compared to its competitors. Alabama Power did not acknowledge, let alone account for, these additional costs and obligations imposed on AT&T when claiming that AT&T is advantaged over its competitors. But, by definition, AT&T cannot receive a "net benefit" over its competitors if it must provide to Alabama Power each and every alleged "benefit" that it receives. This is so because the unique cost to AT&T from providing that alleged "benefit" cancels out any unique value from the alleged "benefit" that it receives, leaving a net value of zero.

9. Alabama Power also claims that AT&T has advantages under the JUA based on terms that merely reflect a difference in how AT&T and Alabama Power's licensees incur costs. For example, under the JUA, AT&T incurs the cost of any work required pre-installation to determine whether and what make-ready is needed and the cost of any work required post-installation to confirm the attachment was properly made. Under the license agreements, AT&T's competitors apparently pay Alabama Power to complete this same work at cost. The costs should be about the same under either approach, so there is no basis for requiring AT&T to pay a higher annual rental rate to account for costs that AT&T already incurred. Similarly, under the JUA, AT&T pays make-ready costs based on a schedule in Appendix B to the JUA that is updated from time-to-time, whereas AT&T's competitors apparently pay a "work order cost" estimated by Alabama Power in advance of each project. But each approach imposes make-ready costs on the attacher, leaving no material difference that would justify AT&T paying a higher rental rate.

10. Some of the alleged benefits cited by Alabama Power are not benefits in my experience. Alabama Power claims that AT&T's location on the pole is an advantage when it is, in fact, a disadvantage given the added transfer costs associated with multiple trips to verify

prerequisite transfers have been completed and increased exposure to damage from climbers and ladders, which may puncture cables or break support wires, and from motor vehicles when cables span roadways. Alabama Power points to its installation of 40-foot poles as an advantage to AT&T, but Alabama Power's 40-foot poles are only necessary because additional entities are attached. Alabama Power deploys poles of this height across its serving area, not solely in the areas jointly served by AT&T, which illustrates that Alabama Power's deployment decisions are not driven by the presence of AT&T's attachments. In fact, a 35-foot pole can accommodate AT&T and Alabama Power and poles of this height are jointly used by the parties. Alabama Power also claims that AT&T is advantaged by a space allocation that provides 2.5 feet of space on a pole, with an option to occupy more. But AT&T does not need, want, or use 2.5 feet of space across Alabama Power's poles, and Alabama Power does not reserve that amount of space on its poles for AT&T's exclusive use. AT&T installs the same types of light-weight copper and fiber optic cables that its competitors install, and so should pay the same rate for its use of comparable space on Alabama Power's poles.

11. For all these reasons, it is my opinion that Alabama Power has not identified any net benefit that gives AT&T a material advantage over its cable and CLEC competitors that could justify AT&T's payment of a higher rental rate for use of Alabama Power's poles.

Mark Peters

Sworn to before me on
this 16th day of April, 2019

I. Cardona

Notary Public

I. CARDONA
My Notary ID # 125669052
Expires May 29, 2019

Exhibit D

Before the
Federal Communications Commission
Washington, DC 20554

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T ALABAMA, Complainant, v. ALABAMA POWER COMPANY, Defendant.	Proceeding No. 19-___ Bureau ID No. EB-19-MD-___

AFFIDAVIT OF CHRISTIAN M. DIPPON, PH.D.
IN SUPPORT OF POLE ATTACHMENT COMPLAINT

CITY OF WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

I, Christian M. Dippon, Ph.D., being sworn, depose and say:

1. My name is Christian M. Dippon. My business address is 1255 23rd Street, Suite 600, Washington, DC 20037. I am a Managing Director at the Washington, DC office of NERA Economic Consulting (NERA) where I also serve as Chair of the Global Energy, Environment, Communications & Infrastructure (EECI) practice. I have specialized in complex technology and regulatory matters in the communications, Internet, and high-tech sectors for 23 years. I received a Bachelor of Science in Business Administration (with honors) from the California State University, a Master of Arts in Economics from the University of California, and a Doctor of Philosophy in Economics from Curtin University (Perth, Australia).

2. My research has included the dynamics of the multi-sided markets of the Internet ecosystem, the competitive ramifications of disruptive technologies and market consolidations,

and the need for (or lack thereof of) regulatory intervention. I have authored and edited several books as well as book chapters in anthologies and have written numerous articles on telecommunications competition and strategies. I also frequently lecture in these areas at industry conferences, continuing legal education programs, and at universities. National and international newspapers and magazines, including the *Financial Times*, *Business Week*, *Forbes*, the *Chicago Tribune*, and the *Sydney Morning Herald*, have cited my work.

3. I routinely offer expert testimony in regulatory and litigation cases in the telecommunications sector and have testified in depositions, jury and bench trials in state and federal courts, domestic (AAA) and international (UNCITRAL, ICC, ICSID) arbitrations, and in matters before international courts, the Federal Communications Commission ("FCC"), the International Trade Commission, the Canadian Radio-television and Telecommunications Commission, and the Competition Bureau Canada. I attach a copy of my curriculum vitae as Exhibit D-1.

4. This affidavit was prepared at the request of counsel for Complainant BellSouth Telecommunications, LLC d/b/a AT&T Alabama ("AT&T") in this matter. Counsel requested that I examine whether the pole attachment rates that Alabama Power charges AT&T are just and reasonable and competitively neutral and, if not, whether calculating the rates based on the FCC's new telecom rate formula offers an economically superior outcome. Counsel also asked me to examine whether Alabama Power has identified anything that individually or collectively provides AT&T a net competitive advantage that would warrant pole attachment rates for AT&T that are higher than the rates calculated under the new telecom rate formula.

5. My conclusions follow. Specifically, I explain why the pole attachment rates that Alabama Power has been charging AT&T under the parties' 1978 Joint Use Agreement, as

amended in 1994 ("JUA"), are *not* just and reasonable and *not* competitively neutral. I also detail why these rates evidence Alabama Power's abuse of its position as owner of a large majority of the utility poles jointly used by the parties, and how application of the FCC's new telecom rate formula will ensure competitive neutrality. Finally, I explain why the alleged benefits listed by Alabama Power are not material, much less net competitive benefits to AT&T, and do not warrant a deviation from the applicable FCC new telecom rate standard.

6. AT&T retained me as an independent expert in this matter. As such, neither my compensation nor my firm's compensation is dependent in any way on the substance of my opinions or the outcome of this matter. I may revise and supplement my opinions upon further review and analysis of any new data, materials, analysis, or pleadings.

I. BACKGROUND

A. The Dispute

7. This matter concerns a dispute between AT&T and Alabama Power with respect to the just and reasonable rates for AT&T's use of Alabama Power's utility poles. AT&T is an incumbent local exchange carrier ("ILEC") in Alabama that offers landline voice, video, and broadband Internet access services over a copper and fiber network that depends, in large part, on utility pole infrastructure.[1] AT&T competes in the provision of its services with competitive local exchange carriers ("CLECs") that obtained wholesale access to AT&T's last mile infrastructure at cost-based rates due to the Telecommunications Act of 1996.[2] Additionally,

[1] AT&T's U-verse video service is available in Alabama, including the Birmingham (Anniston and Tuscaloosa), Mobile, Huntsville, and Montgomery-Selma television markets. (*See* S&P Global, Market Intelligence, U.S. Multichannel Operator Comparison By Market, 3rd quarter 2018.) For an example of AT&T's broadband, *see* AT&T, "Ultra-Fast Internet Powered by AT&T Fiber Available in 12 New Metros," December 12, 2018.

[2] Telecommunications Act of 1996, Pub. L. No. 104, 110 Stat. 56, codified throughout Title 47 of the United States Code (47 U.S.C.).

because of technological progress, AT&T now faces competition from cable TV, satellite, and fixed wireless providers in the provision of Internet access, voice services, and video programming. AT&T also competes with mobile wireless providers for voice traffic. With the deployment of 5G services, AT&T will also be competing with other mobile wireless providers for broadband Internet.[3]

8. One of AT&T's predecessor companies, South Central Bell Telephone Company, entered into the JUA with Alabama Power in 1978 to continue the joint use of utility poles owned by each party and to "use other poles jointly in the future, when and where such joint use will be of mutual advantage in meeting their respective service requirements."[4] Alabama Power is the largest power company in Alabama and a subsidiary of Southern Company, which is a utility holding company.[5] Alabama Power had a monopoly over the provision of electricity over its distribution network when it entered the JUA and continues to face no significant competitive threats today.

9. Alabama Power charges AT&T each year for the net pole attachment rent, which is calculated by subtracting Alabama Power's rent for use of AT&T's poles from AT&T's rent for use of Alabama Power's poles.[6] Each party's rental rate is calculated under a formula in an amendment to the JUA that appears as Appendix B.[7] Appendix B took effect in 1994 and was

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[3] *See* AT&T Comments, GN Docket No. 18-238, Sept. 17, 2018, p. 4 ("AT&T plans to introduce mobile 5G to customers in twelve cities this year.") and p. 7 ("With 5G services offering speeds of up to 1 Gig and beyond, consumers will undoubtedly view wireless services as an even more compelling alternative to fixed.").

[4] JUA, Whereas Clause.

[5] United States Securities and Exchange Commission, The Southern Company, Form 10-K, December 31, 2018, p. 1-1.

[6] Invoice (Nov. 13, 2018).

[7] JUA, Appendix B.

intended to set rental rates for the 1994 through 1998 rental years.[8] It was adopted when Alabama Power owned 357,026 (68%) and AT&T owned 168,705 (32%) of 525,731 utility poles jointly used by the parties.[9]

10. As an example of Alabama Power's invoicing of annual net pole attachment rent, in November 2018, Alabama Power sent AT&T a preliminary invoice for the 2018 rental year that charged AT&T for use of 615,554 Alabama Power poles and Alabama Power for use of 179,021 AT&T poles.[10] This equates to a pole ownership disparity of 77% to 23% in Alabama Power's favor. The preliminary invoice employs 2017 rental rates that are subject to a true-up in a final invoice issued when year-end 2018 cost data becomes available.[11] The 2017 rental rates were [redacted] per pole for AT&T's use of Alabama Power's poles and [redacted] per pole for Alabama Power's use of AT&T's poles.[12]

11. AT&T has been seeking to renegotiate the pole attachment rates that it pays to Alabama Power for over one year.[13] AT&T requested just and reasonable rates calculated based on the FCC's new telecom rate formula,[14] which AT&T calculates as $8.35 per pole for the 2017 rental year based on data available to AT&T.[15] Alabama Power acknowledges that the pole

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[8] Ibid., p. 1.

[9] Ibid.

[10] Invoice (Nov. 13, 2018).

[11] Ibid.

[12] Ibid.; Invoice (Aug. 14, 2018).

[13] *See* Kyle Hitchcock (AT&T) letter to David Bynum (Alabama Power), Re: AT&T Alabama Pole Attachment Rental Rates, March 7, 2018.

[14] Ibid.

[15] Affidavit of D. Rhinehart, Apr. 16, 2019, ¶ 13 (hereinafter Rhinehart Aff.).

attachment rates it charges AT&T must be just and reasonable,[16] but insists that the rates it charges AT&T do satisfy this standard.[17]

B. The FCC's Definition of Just and Reasonable Pole Attachment Rates

12. With the parties agreeing that the rates must be just and reasonable, the present matter is a dispute about the application of this standard and specifically what formulaic approach yields just and reasonable rates. Two FCC orders – one issued in 2011 and another in 2018 – offer specific guidance on this topic and define just and reasonable rates as competitively neutral rates.

13. In 2011, the FCC issued a comprehensive *Pole Attachment Order* "to promote competition and increase the availability of robust, affordable telecommunications and advanced services to consumers throughout the nation."[18] The FCC was "persuaded by evidence in the record that widely disparate pole rental rates distort infrastructure investment decisions and in turn could negatively affect the availability of advanced services and broadband, contrary to the policy goals of the [Communications] Act" because "access to poles and other infrastructure is critical to deployment of telecommunications and broadband services."[19]

14. Among the 2011 reforms were those intended to rationalize pole attachment rates to "minimize the difference in rental rates paid for attachments that are used to provide voice,

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[16] Sherri Morgan (Alabama Power) letter to Kyle Hitchcock (AT&T), Re: June 1, 1978 Joint Use Agreement between Alabama Power Company and AT&T, July 19, 2018, p. 2 (hereinafter Alabama Power letter dated July 19, 2018).

[17] *See*, for example, ibid.

[18] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011), ¶ 1 (hereinafter *Pole Attachment Order*).

[19] Ibid. ¶ 6.

data, and video services."[20] The FCC explained that it was requiring "competitively neutral" pole attachment rates to "help remove market distortions that affect attachers' deployment decisions" and "improve[ ] the ability of different providers to compete with each other on an equal footing, better enabling efficient competition."[21]

15. The FCC applied this principle of competitive neutrality to the pole attachment rates that ILECs pay investor-owned electric utilities like Alabama Power.[22] The FCC stated that when an ILEC is "attaching to other utilities' poles on terms and conditions that are comparable to those that apply to a telecommunications carrier or a cable operator—which generally will be paying a rate equal or similar to the cable rate under our rules—competitive neutrality counsels in favor of affording [the ILEC] the same rate as the comparable provider (whether the telecommunications carrier or the cable operator)."[23] But, "[j]ust as considerations of competitive neutrality counsel in favor of similar treatment of similarly situated providers, so too should differently situated providers be treated differently."[24] Therefore, if a JUA "includes provisions that materially advantage the [ILEC] *vis a vis* a telecommunications carrier or cable operator," the FCC found that "a different rate should apply."[25] The FCC further stated, "the pre-existing, high-end telecom rate" would serve "as a reference point" on that rate because it "helps account

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[20] Ibid. ¶ 126.

[21] Ibid.

[22] Ibid. ¶¶ 217-18.

[23] Ibid. ¶ 217.

[24] Ibid. ¶ 218.

[25] Ibid.

for particular arrangements that provide net advantages to [ILECs] relative to cable operators or telecommunications carriers."[26]

16. In 2018, the FCC responded to reports that, despite the 2011 Order, "electric utilities continue to charge pole attachment rates significantly higher than the rates charged to similarly situated telecommunications attachers."[27] To address this persisting problem, the FCC took another step in its *Third Report and Order* to eliminate "outdated disparities between the pole attachment rates [ILECs] must pay compared to other similarly-situated telecommunications attachers"[28] In particular, the FCC adopted a presumption that for new and newly renewed joint use agreements, ILECs "are similarly situated to other telecommunications attachers" and entitled to a pole attachment rate "no higher than the pole attachment rate for telecommunications attachers calculated in accordance with section 1.1406(e)(2) of the Commission's rules," meaning the FCC's new telecom rate formula.[29] To rebut this presumption, an electric utility must prove by clear and convincing evidence that an ILEC "receives net benefits that materially advantage the incumbent LEC over other telecommunications attachers."[30] In the event that the electric utility rebuts the presumption, the FCC set the pre-existing telecom rate (meaning the rate derived from the telecom rate formula in effect prior to

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[26] Ibid.

[27] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, 14 FCC Rcd 18049 (2018), ¶ 123 (hereinafter *Third Report and Order*) (internal quotation marks omitted).

[28] Ibid. ¶ 3.

[29] Ibid. ¶¶ 123, 126.

[30] Ibid. ¶ 128.

the 2011 *Pole Attachment Order*) as the maximum just and reasonable rate that may be charged.[31]

17. Thus, the FCC requires that just and reasonable rates meet two necessary and related conditions. First, a just and reasonable rate must be competitively neutral. That is, the rate must be consistent with the rate charged to similarly situated telecommunications attachers. Second, the just and reasonable rate charged to an ILEC is one that falls within a specified range between the FCC's new telecom and pre-existing telecom rate formulas. The low end of this range—the FCC's new telecom rate formula—reflects the maximum just and reasonable rate that may be charged to AT&T's CLEC competitors for pole attachments when "providing telecommunications services."[32] The FCC's new telecom rate is thus appropriately the presumptive just and reasonable rate for ILECs under the FCC's *Third Report and Order* because it is the competitively neutral rate where other terms and conditions of attachment are materially comparable. The high end of the range (the FCC's pre-existing telecom rate formula), permits recovery of additional pole costs as appropriate to reflect any net material advantages provided an ILEC as compared to a CLEC or cable competitor.

18. The FCC's definition of just and reasonable is consistent with economic principles. Access to Alabama Power's pole infrastructure is an essential input to AT&T's services in Alabama. Duplication of Alabama Power's pole network by AT&T or any other party is neither economically feasible nor socially desirable. Therefore, Alabama Power has market

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[31] Ibid. ¶ 129.

[32] 47 C.F.R. § 1.1406(d)(2). This so called "new telecom rate" approximates the rate that results from the FCC's cable formula, which applies to AT&T's cable competitors for pole attachments when they are "providing cable services." 47 C.F.R. § 1.1406(d)(1); *see also Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Order on Reconsideration, 30 FCC Rcd 13731 (2015), ¶¶ 1-4 (hereinafter *Cost Allocator Order*).

power when granting access to its pole infrastructure under the essential facilities doctrine (*i.e.*, pole attachment is a bottleneck service).[33] By requiring Alabama Power to price its pole attachment services on a competitively neutral basis, the FCC ensures that Alabama Power provides access to its poles on a nondiscriminatory basis, thereby avoiding distorting the competitive outcome. By also requiring that the rates are based on a regulatory-prescribed formula, the FCC also ensures that Alabama Power (or any pole owner for that matter) cannot exercise its market power by charging excessive rates.

II. THE RATES CHARGED BY ALABAMA POWER ARE NOT JUST AND REASONABLE OR COMPETITIVELY NEUTRAL

19. Several indicators demonstrate that the rates charged by Alabama Power violate competitive neutrality and are unjust and unreasonable.

A. Alabama Power's Rates Violate the FCC's Definition of Just and Reasonable Pole Attachment Rates

20. First, and foremost, the rates charged by Alabama Power violate the FCC's definition of just and reasonable rates because they are neither based on the new telecom rate formula nor are they competitively neutral. The factual evidence in this matter demonstrates that AT&T pays a rental rate that is far higher than the competitively neutral rate. For the 2017 rental year, Alabama Power charged AT&T [redacted] per pole for the use of Alabama Power's poles. This is almost [redacted] times more than the $8.35 per pole rate that AT&T calculated under the new telecom rate formula as the maximum that AT&T's competitors can be charged by Alabama Power for the use of space on Alabama Power's poles.[34] This stark rate imbalance is

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[33] "[F]irms who supply 'essential' or 'bottleneck' facilities in an economy; inputs or facilities which others (including rivals) need to access on reasonable terms to be able to operate in an industry." Christopher Decker, Modern Economic Regulation, Cambridge Univ. Press (2015) p.49.

[34] Rhinehart Aff. ¶¶ 13-14.

incompatible with the FCC's principle of competitive neutrality. Alabama Power would need to provide "clear and convincing evidence" that AT&T receives net material benefits under the JUA that are not provided to AT&T's competitors that amount to more than [redacted] every year for every pole to which AT&T is attached. As I discuss in Section III below, Alabama Power has not pointed to any economic evidence that gives AT&T a net benefit, much less a net material benefit, as compared to its competitors and there is no reason to believe that benefits of this magnitude exist.

21. The unreasonableness of the rates charged by Alabama Power is also evident by comparing them to the rates resulting from the FCC's pre-existing telecom rate formula. This rental rate formula, which applied prior to the 2011 *Pole Attachment Order* to set the maximum rate that could be charged AT&T's CLEC competitors, is now the maximum rate that may be charged an ILEC under the *Third Report and Order*.[35] In 2011, the FCC explained that this rate was an appropriate high-end reference point because it "helps account for particular arrangements that provide net advantages to [ILECs] relative to cable operators or telecommunications carriers."[36] AT&T calculates the rate under the pre-existing telecom rate formula at $12.66 per pole for the 2017 rental year, which is about [redacted] per pole rate Alabama Power charged AT&T for that rental year.[37]

B. Alabama Power's Rates Reflect Unequal Bargaining Power

22. Alabama Power was able to impose unjust and unreasonably high rental rates on AT&T because of the bargaining power it enjoys by virtue of the significant disparity in pole

[35] *Third Report and Order* ¶ 129.

[36] *Pole Attachment Order* ¶ 218.

[37] Rhinehart Aff. ¶¶ 19-20.

ownership. At the time Appendix B to the JUA was adopted, Alabama Power owned 68% of the joint use poles.[38] Since that time, the pole ownership disparity has increased. As of Alabama Power's 2018 preliminary invoice, issued in November 2018, Alabama Power estimated that it owns of 77% of the joint use poles.[39] The unequal bargaining power between Alabama Power and AT&T over the course of the JUA is not merely manifested by the rental rates but in other provisions of the JUA as well.

23. First, the JUA allocates 2.5 feet of usable space to AT&T and 8 feet of usable space to Alabama Power when AT&T uses far less space than what AT&T pays for.[40] This reveals that the synergies of a joint pole network are not shared proportionally.

24. Second, AT&T pays far more than Alabama Power on a per-foot basis. For 2017 rent, AT&T paid [redacted] per pole for 2.5 feet of allocated space when Alabama Power paid [redacted] per pole for 8 feet of allocated space.[41] Alabama Power was thus allocated 220% more usable space than AT&T but paid a rental rate that was just [redacted] more than the rate paid by AT&T. Put differently, Alabama Power was allocated 3.2 times the space allocated to AT&T but paid [redacted] times the rate.

25. Third, the rate formula in Appendix B to the JUA also unreasonably divides the pole cost between Alabama Power (56.9%) and AT&T (43.1%) and does not account for additional rent from any of the third parties with which AT&T competes.[42] AT&T's pole cost

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[38] JUA, Appendix B.

[39] Invoice (Nov. 13, 2018).

[40] JUA, Art. I(M) and Appendix B, Exhibit 2; Affidavit of D. Miller, Apr. 16, 2019, ¶ 17 (hereinafter Miller Aff.).

[41] Ibid. ¶ 8; JUA, Art. I(M) and Appendix B, Exhibit 2.

[42] JUA, Appendix B, Exhibit 2.

allocation (*i.e.*, 43.1%) also does not decrease when a third party attaches to an Alabama Power pole. Instead, Alabama Power continues to collect the full 43.1% of pole cost from AT&T as well as additional rent from the third party, thereby reducing Alabama Power's cost-sharing responsibility. Even worse, the additional entities typically attach in the 2.5 feet of space allocated to AT&T,[43] meaning that AT&T must bear the cost of 2.5 feet of allocated space but receives no offset from the revenues Alabama Power receives when portions of that space are rented to others.

26. To illustrate how Alabama Power's pole ownership advantage allows Alabama Power to overrecover, consider a pole with five attaching entities consistent with the FCC's presumption for urbanized areas.[44] Under the JUA, AT&T must pay 43.1% of pole costs ([redacted] for 2017) for the effective use of 1 foot of space.[45] In this scenario, [redacted] Meanwhile, Alabama Power requires triple the space on the pole as all four communications attachers combined because they presumptively attach within 3 feet of usable space, which leaves 10.5 feet of usable space for the electric utility.[47] Alabama Power thus pays half as much for three times more space when compared to the communications attachers in this example. Such an outcome cannot be the result of just and reasonable rates because a just

[43] *See* Miller Aff. ¶ 17.

[44] 47 C.F.R. § 1.1409(c).

[45] JUA, Appendix B, Exhibit 2; Miller Aff. ¶¶ 8, 17.

[46] *Pole Attachment Order* ¶ 131, n.399; *Cost Allocator Order* ¶¶ 1, 13.

[47] 47 C.F.R. § 1.1410; Miller Aff. ¶ 15 n.4.

and reasonable rate would imply that all parties attaching to the pole pay a proportionate share of the pole costs.

27. In contrast, if Alabama Power charged AT&T the new telecom rate, Alabama Power would receive about 30% of pole costs (4 x 7.4% = 29.6%) from communications attachers requiring a combined 22% of the usable space (3 ft / 13.5 ft = 22.2%). Alabama Power would be responsible for about 70% of pole costs (100% − 29.6% = 70.4%) for the use of about 78% of the usable space on the pole (10.5 ft / 13.5 ft = 77.8%) under the FCC's presumptions—a far more equitable outcome.

C. The JUA Pole Cost Allocation Is Unjust and Unreasonable

28. The primary source of the unjust and unreasonable rates is found in the manner in which AT&T's 43.1% cost allocation is calculated. Under the formula in the JUA, costs are allocated as follows:

$$Pole\ Cost\ Allocation\ (JUA) = \frac{(Space\ Allocated) + \frac{1}{2}(Unallocated\ Space)}{Pole\ Height}$$

This formula requires AT&T to pay i) for the space it is allocated, irrespective of whether it occupies the entire 2.5 feet or not and ii) half of the unallocated space, which includes 40 inches of power separation space that is required due to the presence of Alabama Power's facilities.[48] Furthermore, this cost allocation remains constant irrespective of whether there are additional attachers to the pole. It is highly unlikely that AT&T's predecessor company entered into this clearly unfavorable agreement without knowledge that it lacked viable alternatives.

[48] JUA, Appendix B, Exhibit 2; *see also Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12130 (2001), ¶ 51 (hereinafter *Consolidated Partial Order*).

29. In contrast, the FCC's new telecom rate formula assigns cost using a space factor that divides the cost of the unusable space among *all attaching entities* and ensures that communications attachers *do not pay for the electric utility's power separation space*:

$$Space\ Factor\ (FCC) = \left[\frac{(Space\ Occupied) + \frac{2}{3}\left(\frac{Unusable\ Space}{No.\ of\ Attaching\ Entities}\right)}{Pole\ Height}\right] \times \text{Cost Allocator}$$

This formula is more closely aligned with the outcome of a negotiation among equals because it requires all attaching entities to share the costs of the unusable space and presumes that communications attachers occupy 1 foot of space that does not include the electric utility's power separation space.[49]

30. Not surprisingly, these two calculations yield significantly different values. [redacted]

31. In summary, the JUA rate formula is the type of rate formula that one would expect to result from negotiations between unequal bargaining partners. It assigns a disproportionate amount of pole cost to AT&T as compared to Alabama Power, fails to credit AT&T for rent from third parties, and has been relied upon by Alabama Power for years after its initial term to try to perpetuate the far higher rental rates imposed on AT&T, as compared to the regulated rates that apply to AT&T's competitors.

[49] Ibid; 47 C.F.R. § 1.1410.

III. AT&T DOES NOT ENJOY MATERIAL NET BENEFITS

32. The preceding discussion establishes that the pole attachment rates charged by Alabama Power are unjust and unreasonable and have imposed artificially inflated costs on AT&T that are inconsistent with competitive market conditions. Under the principle of competitive neutrality, AT&T should be charged the new telecom rate that applies to its competitors unless Alabama Power can prove that AT&T receives net benefits under the JUA that materially advantage AT&T over its competitors to justify a higher rate.

33. I reviewed the list of alleged benefits that Alabama Power provided AT&T in a letter dated July 19, 2018.[50] It is my opinion that Alabama Power has not identified any net benefits that provide AT&T a material advantage under the principles of competitive neutrality. Consequently, the proper pole attachment rate for AT&T is the new telecom rate with no further adjustments.

34. Alabama Power misapplies the concept of net benefits for several reasons. First, Alabama Power's list of benefits is incomplete because it considers only whether AT&T is advantaged by certain rights provided under the JUA without considering also whether AT&T is disadvantaged by responsibilities imposed by the JUA. However, considering both rights and responsibilities is an indispensable requirement of competitive neutrality. In fact, as the FCC previously acknowledged: "A failure to weigh, and account for, the different rights and responsibilities in joint use agreement could lead to marketplace distortions."[51] To set an ILEC on equal footing with its competitors, any costs incurred by the ILEC under a JUA—but not incurred by its competitors under a license agreement—must offset any costs avoided by the

[50] Alabama Power letter dated July 19, 2018, pp. 3-4.

[51] *Pole Attachment Order* ¶ 216, n. 654.

ILEC under the JUA—but not avoided by its competitors under a license agreement. Simply accounting for any avoided costs in a new rental rate will leave the ILEC worse positioned than its competitors because the ILEC will be required to pay not just the rental rate but the additional unique costs. The most obvious of the unique costs imposed on AT&T under the JUA, but not imposed on its competitors under the license agreements, are those associated with pole ownership. These substantial costs must be weighed in the analysis to ensure competitive neutrality. Another example involves the pre- and post-installation inspections that Alabama Power cites. AT&T, unlike its competitors, conducts these services.[52] AT&T, as a result, would double-pay if it were required to incur the cost of the services and pay a higher rental rate because it does so.

35. Second, Alabama Power's list of alleged benefits ignores the reciprocal benefits that Alabama Power receives from AT&T as part of the JUA. These benefits are a necessary consideration in measuring net competitive benefits as they are costs that CATV and CLEC competitors do not incur. For instance, Alabama Power claims AT&T enjoys "predictability" because the parties follow a unique approach to make-ready costs. However, AT&T provides Alabama Power that same "predictability" in return. Hence, AT&T does not enjoy any net competitive benefit relative to its competitors because the alleged predictability is not free but requires AT&T to offer the same benefit in return, resulting in no net benefits. Similarly, Alabama Power claims that the JUA includes a more favorable liability sharing provision. Again, AT&T extends that same liability sharing provision to Alabama Power, resulting in no *net* benefits. Alabama Power states that AT&T is not required to purchase insurance or provide

[52] Miller Aff. ¶ 20; Affidavit of M. Peters, Apr. 16, 2019, ¶ 9 (hereinafter Peters Aff.).

Alabama Power a security bond.[53] Alabama Power is also not required to purchase insurance or provide AT&T a security bond. Any value of these alleged benefits provided to AT&T is thus entirely offset by the same value provided by AT&T to Alabama Power and offers AT&T no net benefits that justify an increased rental rate relative to its competitors.

36. Third, comparing the JUA to a potentially nonrepresentative sample of license agreements does not establish any net competitive benefits. Alabama Power offered just two of its license agreements, thereby denying AT&T the opportunity to determine whether their terms are typical. But, competitive neutrality must consider an ILEC's comparability as against all competitors that pay the new telecom rate.[54] The fact that Alabama Power may have negotiated a term with one or two licensees does not mean that it required that term of all licensees in exchange for the new telecom rate. Two licensee agreements cannot establish that an ILEC has a net material advantage that justifies a rate *perpetually* higher than the new telecom rate for *all* poles to which it is attached.

37. Fourth, Alabama Power's list of alleged benefits is further flawed because some of the claimed advantages are contradicted by real-world experience. Competitive neutrality must necessarily look to the actual conditions in the competitive communications marketplace. A higher rate, as a result, is not warranted because the JUA allocates 2.5 feet of space to AT&T and may permit AT&T to occupy more space in some cases. AT&T does not, in fact, use 2.5 feet of space across Alabama Power's poles, and Alabama Power has let others attach within that space

[53] License Agreement, Exhibit D.

[54] The FCC Enforcement Bureau's decision in the Verizon Virginia and Dominion Virginia Power Pole Attachment Complaint proceeding recognized that a higher rate is only warranted if an ILEC has a net material advantage "relative to a typical competitor or an average of its competitors." 32 FCC Rcd 3750, ¶ 20 (2017).

that is paid for by AT&T.[55] Nor is a higher rate justified because AT&T typically occupies the lowest position on the pole. Instead, evidence confirms that AT&T's typical position on the pole, as compared to the positions of its competitors, has subjected its facilities to increased damage, higher transfer costs, and more regular requests to temporarily raise the facilities to accommodate oversized loads.[56] Thus, AT&T's location on the pole is a competitive disadvantage for AT&T, in spite of Alabama Power's unsupported claim otherwise.

38. Fifth, Alabama Power's alleged benefits and in particular its reliance on AT&T's location on the poles is additionally flawed because it is the result of historical conditions that must continue today so that facilities of different providers do not crisscross midspan.[57] There is no good reason to charge AT&T a higher rate for something that it cannot change and that operates to the benefit of all attachers. Alabama Power's reliance on the height of poles installed decades ago is similarly flawed because it relies on history, rather than current conditions, to set current rates. In any event, the JUA clarifies that a higher rate is not justified because Alabama Power installed 40-foot poles because 35-foot poles are permitted and have been installed under the JUA.[58] The taller 40-foot poles can accommodate AT&T *and* its competitors—not simply AT&T—and so their installation does not advantage AT&T over its competitors.[59]

39. Sixth, Alabama Power's list of alleged benefits has another comprehensive flaw in that it ignores the fact that some of the alleged benefits, even if they existed, do not exist for every pole every year. Alabama Power suggests that, if AT&T received a competitive benefit

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[55] Miller Aff. ¶ 17.

[56] Ibid. ¶ 19.

[57] Ibid. ¶ 15.

[58] JUA, Article VII(D); Miller Aff. ¶ 15.

[59] Ibid.; Peters Aff. ¶ 10.

worth $200 in a single year for a service that only occurs at the time of its attachment to 100 poles, that competitive benefit would entitle Alabama Power to charge AT&T an extra $2 per pole every year for all 615,554 poles to which AT&T attaches. This is clearly absurd and if a net competitive benefit were found (although there are none), it must be averaged across all poles to which AT&T attaches. In the hypothetical example above, this would translate into a fraction of a penny only in the year in which the competitive benefit was received—hardly a material competitive benefit justifying a higher rate during that rental year, much less in future years.

40. Finally, and related to the preceding point, the mere existence of net benefits does not entitle Alabama Power to a pole attachment rate that is randomly higher than the rate under the new telecom rate formula. Rather, the value of the alleged benefits must be quantified and, if present and material, added to the rate under the new telecom rate. Alabama Power has not quantified the value of any of its benefits and thus the alleged benefits cannot and do not justify the over [redacted] per pole rate differential.[60]

41. Each alleged benefit in Alabama Power's list thus suffers from methodological flaws that confirm that they are not competitive benefits at all, let alone net benefits that could justify the disparity between the new telecom rate applicable to AT&T's competitors and the rates charged by Alabama Power. It is therefore my opinion that the new telecom rate is the competitively neutral rate, thus it is the rate that should be charged to AT&T.

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[60] Alabama Power improperly tries to reduce this per-pole rate differential by arguing that it charges licensees "on a per-attachment – not per pole – basis." This claim should be rejected. Charging per-attachment rates violates the Commission's rules, which "determine the maximum just and reasonable rate *per pole*." *See Consolidated Partial Order*, 16 FCC Rcd at 12122, ¶ 31 (emphasis added). As a result, Alabama Power cannot claim that AT&T is competitively advantaged because Alabama Power has itself denied other attachers the just and reasonable rates to which they are also entitled.

IV. CONCLUSION

42. Based on these considerations, I find that the pole attachment rates that Alabama Power has charged AT&T since 2011 have not been and will not be just and reasonable, competitively neutral rates. I recommend that the FCC set the just and reasonable rate for AT&T's use of Alabama Power's poles as the properly calculated per pole new telecom rate because AT&T does not receive net benefits under the JUA that provide it a material advantage over its CLEC and cable competitors.

Washington, District of Columbia
The foregoing instrument was subscribed and sworn before me this 16th day of APRIL, 2019 by [illegible]
Notary Public
My commission expires _____

Christian M. Dippon, Ph.D.

Sworn to before me on
this 16th day of April, 2019

Notary Public

Rosalind Brown
Notary Public, District of Columbia
My Commission Expires: December 14, 2019

ROSALIND BROWN NOTARY PUBLIC EXP. 12-14-19 DIST. OF COLUMBIA

Exhibit D-1

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Dr. Dippon is a Managing Director at NERA and a leading authority in complex litigation disputes and competition matters in the communications, Internet, and high-tech sectors. He is also the Chair of NERA's Global Energy, Environment, Communications & Infrastructure (EECI) Practice, where he leads over 100 experts in the areas of energy, communications, media, Internet, environment, auctions, transport, and water. Global Arbitration Review (2019) ranks Dr. Dippon among the world's leading commercial arbitration experts.

Dr. Dippon advises his clients in economic damages assessments, class certifications and damages, false advertising, antitrust matters, and regulatory and competition issues. He has extensive testimonial and litigation experience, including depositions, jury and bench trials in state and federal courts, domestic (AAA) and international arbitrations (UNCITRAL, ICC, ICSID), and submissions before international courts. He assists clients with a broad range of litigation disputes related to wireline, wireless, cable, media, Internet, consumer electronics, and the high-tech sector. Dr. Dippon also routinely testifies before US and international regulatory authorities, including the Federal Communications Commission, the International Trade Commission, the Canadian Radio-television and Telecommunications Commission, and the Competition Bureau Canada.

Dr. Dippon has authored and edited several books as well as book chapters in anthologies and has written numerous articles on telecommunications competition and strategies. He also frequently lectures in these areas at industry conferences, continuing education programs for lawyers, and at universities. National and international newspapers and magazines, including the *Financial Times*, *Business Week*, *Forbes*, the *Chicago Tribune*, and the *Sydney Morning Herald*, have cited his work.

Dr. Dippon serves on NERA's Board of Directors, the Board of Directors of the International Telecommunications Society (ITS), and on the Editorial Board of *Telecommunications Policy*. He is a member of the Economic Club of Washington, DC, the American Economic Association

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Education

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Professional Experience

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2017–present	Chair, NERA's Global Energy, Environment, Communications & Infrastructure (EECI) Practice
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2004–2014	Vice President
2000–2004	Senior Consultant
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1997–1998	Senior Analyst
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Who's Who Legal Arbitration 2019, Expert Witness

Testimony in Regulatory and Judicial Proceedings (2010–Present)

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March 27, 2019

Exhibit 1

ALABAMA POWER COMPANY

AND

SOUTH CENTRAL BELL TELEPHONE COMPANY

JOINT USE AGREEMENT

JUNE 1, 1978

CONFORMED COPY

INDEX

THIS AGREEMENT, made as of the first day June, 1978, by and between ALABAMA POWER COMPANY, an Alabama corporation, hereinafter referred to as the "Power Company", and SOUTH CENTRAL BELL TELEPHONE COMPANY, a Delaware corporation, hereinafter referred to as the "Telephone Company",

WITNESSETH:

WHEREAS, in the areas in the State of Alabama served by both parties certain utility poles are presently used jointly by the Power Company and the Telephone Company, such joint use being maintained under the terms of an Urban Joint Use Agreement dated January 1, 1966, between the Power Company and Southern Bell Telephone and Telegraph Company, predecessor of the Telephone Company, and a Rural Joint Use Agreement dated January 1, 1976, between the Power Company the Telephone Company; and

WHEREAS, the parties desire to continue such joint use and to use other poles jointly in the future, when and where such joint use will be of mutual advantage in meeting their respective service requirements; and

WHEREAS, when the parties are making arrangements for the joint use of new poles and the party proposing to erect the new poles already owns a majority of the poles, the parties shall take into consideration the desirability of having the new poles owned by the party owning the lesser number of joint use poles so as to progress toward a division of ownership of poles so that neither party shall be required to pay annual rental payments, giving due regard to the avoidance of mixed ownership in lines; and

WHEREAS, because of changed conditions and experience gained, and to facilitate administration of joint use, the parties desire to terminate the aforementioned Urban Joint Use Agreement dated January 1, 1966 and the Rural Joint Use Agreement dated January 1, 1976, and enter into a new Joint Use Agreement giving due recognition to the fact that the comparative numbers of joint use poles owned by the parties, the respective space allocated to or used by the parties and the relative positions of the parties on the poles all have a bearing on the contribution to be made by the parties both as to ownership and maintenance of joint use poles.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto for themselves, their successors and assigns do hereby terminate the existing Urban Joint Use Agreement dated January 1, 1966 and the Rural Joint Use Agreement dated January 1, 1976, and do hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS

For the purpose of this agreement, the following terms when used herein shall have the following meanings:

A. ATTACHMENT is any wire, cable, strand, material or apparatus affixed to a joint use pole now or hereafter used by either party in the construction, operation or maintenance of its plant. When a Telephone Company pedestal is placed adjacent to a Power Company pole for grounding purposes, and said pedestal is not affixed to the pole, *no* "attachment" exists.

B. CODE means the National Electrical Safety Code, as it may be amended from time to time.

C. INJURIES include death, personal injury and property damage or destruction.

D. JOINT USE is maintaining or specifically reserving space for the attachments of both parties on the same pole at the same time.

E. JOINT USE POLE is a pole upon which space is provided under this agreement for the attachments of both parties, whether such space is actually occupied by attachments or reserved therefor upon specific request.

F. LICENSEE is the party hereto having the right under this Agreement to make attachments to a joint use pole owned by the other party hereto.

G. OWNER is the party owning the joint use pole.

H. POLE or POLES include the singular and plural.

I. REARRANGING OF ATTACHMENTS is the moving of attachments from one position to another on a joint use pole.

J. RESERVED, as applied to space on a pole, means unoccupied space provided and maintained by Owner, either for its own use or expressly for Licensee's exclusive use at Licensee's request.

K. RIGHT OF WAY is the legal right to use the real property of another.

L. STANDARD JOINT USE ATTACHMENT POLE means a 40-foot, Class 5 treated wood pole which meets the requirements of the Code.

M. STANDARD SPACE ALLOCATION means an allocation of sufficient space on a joint use pole for the use of each party, taking into consideration requirements of the Code, and is more particularly defined as follows:

(1) For Power Company, the exclusive use of eight (8) feet of space on 40-foot poles, *measured downward* from a point six (6) inches below the top of the pole; and

(2) For Telephone Company, the exclusive use of two and one-half (2½) feet of space on 40-foot poles, *measured upward* from the point of attachment on the pole, required to provide at all times the CODE minimum clearance above ground for the lowest horizontally run line wire or cable attached in such space.

N. TRANSFERRING OF ATTACHMENTS is the removing of attachments from one pole and placing them upon another pole.

ARTICLE II
TERRITORY AND SCOPE OF AGREEMENT

A. This Agreement shall cover all poles of each of the parties within the common operating areas served by the parties hereto in Alabama.

B. The Owner of any pole may exclude said pole from joint use if in its reasonable judgment the pole is necessary for its sole use.

ARTICLE III
PERMISSION FOR JOINT USE

Subject to the terms and conditions of this Agreement, each party hereby permits joint use by the other party of any of its poles in accordance with the standard space allocation defined in Article I and the following:

(1) Allocated pole space may, without additional charge, be used by the party to which it is not allocated for the purpose of installing and maintaining street lighting and vertical attachments (such as but not limited to ground wires, gang operated switch control rods and underground risers) if by the terms of the Code the proposed use is authorized and such use does not unreasonably interfere with the use being made by the party to which such space is allocated;

(2) So long as the provisions of the Code are met, unallocated space may, without additional charge, be used by the Power Company and Telephone Company (if Code provisions cannot subsequently be met then billing for the required modifications will be in accordance with Appendix A attached hereto and hereby made a part hereof).

(3) So long as the provisions of the Code have been met, any existing joint use pole, or any pole hereafter placed in joint use, shall be deemed satisfactory to both parties and adequate for their requirements whether or not the space allocations made herein have been observed.

ARTICLE IV
SPECIFICATIONS

A. The joint use of poles covered by this Agreement shall at all times be in conformity with all applicable provisions of law and with the minimum requirements of the Code in effect at the time the respective attachments are made, and with such additional requirements as may be mutually approved in writing by the Manager—Distribution of the Power Company and the General Manager—Facility Services of the Telephone Company.

B. Construction specifications for joint use poles and attachments shall be compiled and used as a guide to construction practices by both parties to this Agreement.

ARTICLE V
RIGHT OF WAY AND LINE CLEARING

A. Each Party shall obtain the necessary rights of way to construct, operate, and maintain its own facilities. In the case of new pole lines constructed to establish joint use, the owner of the line shall obtain a right of way suitable in width for joint use, which shall be 15 feet on each side of the center line unless lesser widths are mutually agreed upon prior to acquisition.

B. Line clearing and trimming shall be performed as follows:

1. When constructing a new pole line to establish joint use, the Owner shall cut, clear and trim the entire right of way swath that is acquired pursuant to Paragraph A above.
2. In all other instances each party shall be responsible for its own initial and recurring cutting, clearing or trimming.

C. Nothing stated herein shall preclude the parties from mutually sharing the cost of right of way acquisition or the cost of cutting, clearing, or trimming right of way.

ARTICLE VI
PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS

A. Either party desiring to reserve space on any pole of the other not then designated as a joint use pole shall make written application therefor, specifying the pole involved, the number and kind of its attachments to be placed thereon and the character of the circuits to be used. Within ten (10) days after the receipt of such application, Owner shall notify the applicant in writing whether it is excluding said pole from joint use under the provisions of Article II. Upon receipt of notice from Owner that said pole is not excluded, and after completion of any required transferring or rearranging of attachments on said pole or any pole replacement as provided in Article VII hereinbelow, the applicant shall have the right to use said pole as Licensee in accordance with the terms and conditions of this Agreement. Notwithstanding the foregoing, attachments placed by either party on the other's pole without such application and approval shall subject said pole to the terms of this Agreement. In such case, Owner shall have the right to require Licensee to remove at its sole expense any such attachments on poles coming within the exceptions described in Article II. Should Licensee fail to remove such attachments, such failure shall constitute default according to Article XI below.

B. Except as herein otherwise expressly provided, each party at its own expense shall place, maintain, rearrange, transfer and remove its own attachments, and shall at all times perform such work promptly and in such a manner as not to interfere with work or service being performed by the other party. Upon completion of work by the Owner which will necessitate transfer of the Licensee's attachments, the Owner shall provide written notice to the Licensee that such transfer must be completed within 30 days. If such transfer of attachments is not completed at the end of 30 days the old pole will become the property of the Licensee, and the Licensee shall save harmless the former Owner of such pole from all obligations, liabilities, damages, costs, expenses, or charges incurred thereafter because of or arising out of the presence, location or condition of such pole or any attachment thereon, whether or not it is alleged that the former Owner was negligent or otherwise. Licensee shall pay the former Owner the salvage value, as set forth in Appendix A. of said pole.

C. When the Power Company desires to change the primary voltage system on joint use poles, it shall give the Telephone Company sixty (60) days' written notice of such contemplated change. If the Telephone Company agrees to joint use with such change, joint use of such poles shall be continued with such changes in construction as may be required to meet the terms of the Code, at the expense of the Power Company. If the Telephone Company does not agree within thirty (30) days from receipt of such notice to such change, then:

(1) the parties hereto shall determine what circuits shall be removed from existing points on the joint use poles involved, and the net cost of establishing in a new position on such poles or in a new location elsewhere such circuits or lines as may be necessary to allow the other party to continue to furnish the same service as existed at the time such change was decided upon, and

(2) the responsibility for the cost of establishing such circuits in the new position or new location shall be mutually agreed upon between the parties hereto.

Unless otherwise agreed by the parties, ownership of any new pole line constructed in a new location under this provision shall be owned by the party for whose use it is constructed. The net cost of establishing service in the new location shall be exclusive of any increased cost due to the substitution of facilities of a substantially new or improved type or of increased capacity, but shall include the cost of the new pole line including rights of way and the cost of establishing such circuits in the new location.

D. The Owner where practicable shall place anchors suitable for joint use upon consideration of the joint load and guy lead requirements. The cost of the anchor shall be shared, and will be billed, in accordance with Appendix A. Each party shall install its own guy wires.

ARTICLE VII
ERECTING, REPLACING OR RELOCATING POLES

A. If one party finds it necessary to serve an area, either as an extension of a service, as an additional service, or as reconstruction of an existing service, it shall notify the other party of such need. The parties shall then mutually determine whether joint use poles are desirable. If joint use poles are to be installed, the parties shall jointly determine: 1) which party shall own the poles, 2) the size of the poles, 3) the locations of the poles and 4) the date the poles should be set. Written confirmation of the decisions made shall be given by the party placing the poles at the time the authorization is prepared.

B. The cost of erecting joint use poles, either as new pole lines or as extensions or replacements of existing pole lines, whether or not previously in joint use, shall be borne by the parties in accordance with the schedule outlined in Appendix A. Appendix A shall be reviewed annually and changes may be made when mutually agreed upon by Manager—Distribution for the Power Company and the General Manager—Facility Services for the Telephone Company.

C. Whenever any joint use pole, or any pole about to become a joint use pole, is insufficient in size or strength for the existing attachments and for proposed immediate additional attachments thereon, Owner shall promptly replace such pole with a new pole of the necessary size and strength, and make such other changes in the existing pole line in which such pole is included, as may be made necessary by the replacement of such pole and the placing of such attachments, all at a cost to be borne by the parties according to the schedule outlined in Appendix A.

D. Notwithstanding reference to a standard joint use attachment pole, nothing in this agreement is intended to preclude the following practices when agreed to by both parties: (1) the use of joint use poles of less strength than the standard joint use attachment pole; (2) the use of 35-foot or shorter joint use poles if consistent with sound engineering practices and the Code, after providing for the space requirements of both parties, even though such poles would not provide the standard space allocation referred to in this agreement; and (3) the use of joint use poles of different composition than the standard joint use attachment pole.

E. Whenever either party hereto declines joint use as provided in paragraph A above and subsequently finds it necessary to establish joint use on said poles installed by the other party, the party that originally declined joint use may be required to purchase said pole line in accordance with Appendix A.

F. When replacing a joint use pole carrying a terminal, underground connections or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied, unless special conditions make it necessary or mutually desirable to set it in a different location.

G. Any payments made by Licensee under the foregoing provisions of this Article are in lieu of increased rental payments and do not in any way affect the ownership of poles, except as provided in Paragraph E, above.

ARTICLE VIII
MAINTENANCE OF FACILITIES

A. Owner shall, at its own expense, maintain its joint use poles in a safe and serviceable condition and in accordance with the requirements of the Code, and shall replace poles that become defective, in accordance with the provisions of Article VII.

B. Each party shall, at its own expense, at all times maintain all of its attachments in safe condition, thorough repair, and in accordance with the requirements of the Code.

C. The parties hereby agree that a cooperative approach will be taken in solving noise or inductance problems that may occur.

ARTICLE IX
ABANDONMENT OF JOINT USE POLES

A. Any time Owner desires to abandon any joint use pole, it shall give Licensee at least ninety (90) days' written notice. If, at the expiration of such period, Owner shall have no attachments on such pole but Licensee shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of Licensee, and Licensee shall save harmless the former Owner from all obligations, liabilities, damages, costs, expenses, or charges incurred thereafter because of or arising out of the presence, location or condition of such pole or any attachment thereon, whether or not it is alleged that the former Owner was negligent or otherwise and shall pay Owner a sum equal to the value of such abandoned pole as indicated in Appendix A.

B. Licensee may at any time abandon a joint use pole by removing therefrom all of its attachments, and giving due notice thereof in writing to Owner.

ARTICLE X
RENTAL PAYMENT AND BILLING

A. The parties mutually agree that the cost of maintaining joint use poles should be equitably shared in accordance with Appendix B, attached hereto and hereby made a part hereof. Appendix B shall be reviewed annually and changes may be made when mutually agreed upon by the Manager—Distribution for the Power Company and the General Manager—Facility Services for the Telephone Company.

B. When either party utilizes aerial construction there shall be no charge for bonding or grounding to the facilities of the other party when such bonding or grounding facilities are available.

ARTICLE XI
DEFAULTS

A. If either party shall fail to discharge any of its obligations under this Agreement and such failure shall continue for thirty (30) days after notice thereof in writing from the other party, all rights of the party in default hereunder, pertaining to making attachments to additional poles of the other, shall be suspended. If such default shall continue for a period of ninety (90) days after such suspension, the other party may forthwith terminate the right of the defaulting party to attach to additional poles of the other party. Any such termination of the right to attach to such additional poles of the other by reason of any such default shall not abrogate or terminate the right of either party to attach to existing joint use poles or to maintain existing attachments, and all such attachments shall continue thereafter to be maintained pursuant to and in accordance with the terms of this Agreement, which Agreement shall, so long as such attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to such attachments.

B. In the event either party should fail to perform its obligations either during the term of this Agreement or after termination made in accordance with

the terms of this Article or Article XV, or fail to properly maintain or promptly replace joint use poles or to transfer attachments thereto after thirty (30) days' written notice from the other, the other party shall have the right to maintain such poles or to replace the same or to maintain such attachments at the expense of the party so failing, and shall be fully indemnified for all damages whatever in taking such action or the manner of taking it.

ARTICLE XII
LIABILITY AND DAMAGES

Whenever any liability is incurred by either or both of the parties for damages for injuries to the employees or to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this agreement or due to the proximity of the wires, cables, strands, material, or apparatus and fixtures of the parties attached to the joint use poles covered by this Agreement, the liability for such damages, as between the parties shall be as follows:

(1) Each party shall be liable for all damages for such injuries to persons or property caused solely by its negligence or solely by its failure to comply at any time with the Code.

(2) Each party shall be liable for all damages for such injuries to its own employees or its own property that are caused by the concurrent negligence or both parties or that are due to cause or causes which cannot be traced to the sole negligence of the other party.

(3) Each party shall be liable for ½ of all damages for such injuries to persons other than employees of either party and for ½ of all damages for such injuries to property not belonging to either party that are caused by the concurrent negligence of both parties or that are due to causes which cannot be traced to the sole negligence of either party.

(4) Where, on account of injuries of the character described in the preceding paragraphs of this Article, either party shall make any payments to its injured employee or to his relatives or representatives in conformity with (a) the provisions of any workmen's compensation with (a) the provisions of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (b) any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties or either or them, such payments shall be construed to be damages for injuries within the terms of the preceding paragraphs numbered (1) and (2) and shall be paid by the parties accordingly.

(5) All claims (which shall include actions) for damages arising hereunder that are asserted against or affect the parties jointly shall be dealt with by the parties jointly; provided, however, if claimant desires to settle upon terms acceptable to one party but not to the other, the party desiring to settle may, without waiver of or prejudice to its rights under this article, pay to the other party ½ of the expense which such settlement would involve, and thereupon said other party shall be bound to idemnify and hold harmless the party making such payment from all further liability and expense on account of such claim.

(6) In the adjustment between the parties of any claim for damages arising hereunder, the liability assumed hereunder by the parties shall include, in addition to the amounts paid to claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, attorneys' fees, disbursements and other proper charges and expenditures.

ARTICLE XIII
RIGHTS OF OTHER PARTIES

A. If either party has, prior to the execution of this Agreement, conferred upon others not parties to this Agreement (outside parties), by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges with respect to existing attachments of such outside parties, which attachments shall continue in accordance with the present practice; all future attachments of such outside parties shall be in accordance with the requirements of Paragraph B below, except where such outside parties have by agreements entered into prior to the execution of this Agreement acquired enforceable rights or privileges to make attachments which do not meet such space allocations. Owner shall derive all of the revenue accruing from such outside parties. Any contractual rights or privileges of outside parties recognized in this Paragraph shall include renewals of or extensions of the term (period) of such contracts.

B. If either party hereto desires to confer upon others not parties to this Agreement (outside parties), by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, it shall have the right to do so, provided all such attachments of such outside parties are made in accordance with the following: (1) such attachments shall be maintained in conformity with the requirements of the Code, and (2) such attachments shall not be located within the space allocation of Licensee, unless Licensee concurs in such occupancy. Such concurrance shall in no way waive Licensee's right to occupy its allocated space in the future. Owner shall derive all of the revenue accruing from such outside parties.

C. For the purpose of this Agreement, all attachments of any such outside party shall be treated as attachments belonging to Owner, and the rights, obligations and liabilities hereunder of Owner in respect to such attachments shall be the same as if it were the actual owner thereof.

D. Unless otherwise agreed upon with respect to any rights and privileges granted under this Article to others not parties hereto, Owner shall reimburse Licensee's cost for transferring and rearranging Licensee's attachments to provide space for such outside parties.

ARTICLE XIV
NOTIFICATION PROCEDURES

Wherever in this Agreement notice is required to be given by either party hereto to the other, such notice shall be in writing mailed or delivered to the Manager—Distribution of the Power Company at its office at Birmingham, Alabama, or to the General Manager-Facility Services of the Telephone Company at its office at Birmingham, Alabama, as the case may be, or to such other addressee as either party may from time to time designate in writing for that purpose.

ARTICLE XV
TERM OF AGREEMENT

A. Subject to the provisions of Article XI herein, this Agreement shall continue in full force and effect through June 1, 1988, and shall continue thereafter until terminated, insofar as the right to attach to additional joint use poles is concerned, by either party giving to the other party one (1) year's notice in writing of intention to terminate the right of both parties to attach to additional joint use poles. Any such termination of the right to attach to additional joint use poles shall not abrogate or terminate the right of either party to attach to existing joint use poles or to maintain existing attachments, and all such attachments shall continue thereafter to be maintained, pursuant to and in accordance with the terms of this Agreement, which Agreement shall.

so long as such attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to such attachments.

B. Upon termination under Article XI or this Article XV, the average historical costs of joint use poles which appear in Appendix B shall be updated annually to reflect an annual mortality of 2½ percent by reducing the total number of 35-foot and shorter and 40-foot and taller poles in joint use by 2½ percent of each such category at its unit cost in the earliest year or years and by adding the same number of percentages of such poles at their unit cost in the latest year of the current 25-year period being used in Appendix B although such reduction or addition may result in a span of years greater or lesser than the normal 25-year span.

ARTICLE XVI
ASSIGNMENT OF RIGHTS

A. Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise transfer this Agreement, in whole or in part, without the written consent of the other party; provided, that either party shall have the right without such consent to mortgage any or all of its property, rights, privileges and franchises, or to lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage, or in case of such lease, transfer, merger or consolidation its rights and obligations hereunder shall pass to such successors and assigns; and provided, further, that subject to all of the terms and conditions of this Agreement, either party may without such consent permit any corporation conducting a business of the same general character as that of such party, with which it is affiliated by corporate structure, to exercise the rights and privileges of this agreement in the conduct of its said business.

B. For the purposes of this Agreement, all attachments maintained on any joint use pole by the permission of either party hereto, as provided in Paragraph A above, shall be considered the attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this Agreement, in respect to such attachments, shall be the same as if it were the actual owner thereof.

C. The attachments of each party hereto or of others permitted by this Agreement shall at all times be and remain its or their property, with the full right of removal, and shall not become subject to any liens against the other party.

ARTICLE XVII
WAIVER OF TERMS OF CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XVIII
ARBITRATION

It is the purpose of this Agreement to provide ways and means for settling controversies and disputes which may arise in connection with the joint use of poles. Any differences of opinion between the district representatives of the parties as to the intent of the Agreement and any differences which are not covered by the terms hereof, shall be referred through channels to the General Manager—Facility Services of the Telephone Company and the Manager—Distribution of the Power Company for decision. When differences cannot amicably be settled by the parties hereto, the matters in dispute shall be submitted to arbitration in accordance with standard arbitration procedures as prescribed by the National Academy of Arbitrators.

ARTICLE XIX
EXISTING CONTRACTS

The Urban Joint Use Agreement dated January 1, 1966, between the Power Company and Southern Bell Telephone and Telegraph Company, predecessor of the Telephone Company, and the Rural Joint Use Agreement dated January 1, 1976, between the Power Company and the Telephone Company are, by mutual consent, hereby cancelled and superseded by this Agreement.

ARTICLE XX
SUPPLEMENTAL ROUTINES AND PRACTICES

Nothing herein shall preclude the parties from preparing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate on this 5 day of September 1978, effective as of June 1, 1978.

Witness:

ALABAMA POWER COMPANY

H.M. Dickinson

BY ORIGINAL SIGNED BY R.F. DAVIS
Vice President

Witness:

SOUTH CENTRAL BELL TELEPHONE COMPANY

P.C. Carty, Jr.

BY ORIGINAL SIGNED BY B.B. BROWN
Vice President

APPENDIX A

This Appendix to the Joint Use Agreement dated June 1, 1978, consisting of five pages, shall be used to determine the cost responsibility and the amounts to be billed for modifications of facilities by either party in accordance with the terms of the agreement. This revision shall supersede all previous revisions of Appendix A and be effective upon execution by both parties.

BELLSOUTH TELECOMMUNICATIONS, INC
d/b/a AT&T Alabama

By _____

Printed Name Rick Suarez

Title VP SE C+E

Date 2-10-10

ALABAMA POWER COMPANY

By Don Boyd

Printed Name Don Boyd

Title PD - Distribution Planning Manager

Date 2-16-2010

ALABAMA POWER
A SOUTHERN COMPANY

Appendix A - December 16, 2009
Action Schedule - Page 2a of 5

I. ERECTING NEW JOINT USE POLE LINE
- A. Standard 40 Ft. pole or shorter
- B. Extra height for owner
- C. Extra height for licensee
- D. Extra height to be shared

II. EXISTING JOINT USE POLE LINE
- A. REPLACE NON-DEFECTIVE POLES FOR ADDITIONAL HT.
  1. Extra height for owner
  2. Replace 35 Ft. or shorter for licensee
  3. Replace 40 Ft. or taller for licensee
  4. Replace 35 Ft. or shorter (extra ht. shared)
  5. Replace 40 Ft. or taller (extra ht. shared)
- B. REPLACE DEFECTIVE POLES
  1. New pole like old pole
  2. Extra height for owner
  3. Replace 35 Ft. or shorter for licensee
  4. Replace 40 Ft. or taller for licensee
  5. Replace 35 Ft. of shorter (extra ht. Shared)
  6. Replace 40 Ft. or taller (extra ht. shared)
- C. ADDING POLES IN EXISTING JOINT USE LINES
  1. Intermediate pole for licensee
  2. New pole for owner
  3. Extra height for owner
  4. Extra height for licensee
  5. Extra height to be shared
- D. WORK ON JOINT USE LINES
  1. Work on licensee's attachments-by owner
  2. Work on owner's attachment-by licensee

	A TOTAL EXPENSE OF OWNER	B TOTAL EXPENSE OF LICENSEE	C TOV OF THE EXISTING POLE	D TOV OF THE NEW POLE	E TOV COST OF REMOVAL	F 1/2 TOV OF THE NEW POLE	G LESS 1/2 TOV OF NEW POLE LIKE OLD POLE	H LESS TOV OF NEW POLE LIKE OLD POLE	I LESS 1/2 TOV OF A NEW STD JU POLE	J COST OF TRANSFERRING (SEE PAGE 4)	K LESS TOV OF A NEW STD JU POLE	L SEE PAGE 4 OF APPENDIX A	M LESS TOV SALVAGE VALUE	N SALVAGE VALUE IN TOV	O 1/2 TOV OF ANCHOR	P CIAC APPLICABLE Y/N ... See Notes 5 and 6	
1	X															N	1
2	X															N	2
3				X							X					Y	3
4						X			X							Y	4
5																-	5
6																-	6
7	X															N	7
8			X	X	X						X		X			Y	8
9			X	X	X			X					X			Y	9
10						X			X							Y	10
11						X	X									Y	11
12	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	12
13	X															N	13
14	X															N	14
15				X							X					Y	15
16				X				X								Y	16
17						X			X							Y	17
18						X	X									Y	18
19																-	19
20				X												Y	20
21	X															N	21
22	X															N	22
23				X							X					Y	23
24						X			X							Y	24
25	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	25
26		X								X						N	26
27	X									X						N	27

ALABAMA POWER
A SOUTHERN COMPANY

Appendix A - December 16, 2009
Action Schedule - Page 2b of 5

III. MAKE NON JOINT USE POLE LINE SUITABLE FOR J.U.
- A. REPLACE NON DEFECTIVE POLE FOR ADDITIONAL HT.
  - 1. Replace 35 Ft. or shorter with 40 Ft.
  - 2. Extra height for owner
  - 3. Extra height for licensee
  - 4. Extra height to be shared
- B. REPLACE DEFECTIVE POLES
  - 1. Replace any size with 40 Ft. or shorter
  - 2. Extra height for owner
  - 3. Extra height for licensee
  - 4. Extra height to be shared
- C. ADDING INTERMDIATE POLE
  - 1. For licensee only
  - 2. Pole needed by both parties
- D. WORK ON NON JOINT USE LINES FOR LICENSEE
  - 1. Replace defect pole for mid span separation
  - 2. Replace non-defect pole for mid span separation
  - 3. Replace adjacent poles for grading

IV. MISCELLANEOUS
- A. POLE SALES
  - 1. Abandonment by owner (article IX)
  - 2. Failure to transfer by licensee (article VI)
  - 3. To establish joint use (article VII E)
- B. APCo SETS TEL. CO. POLE
- C. APCo REMOVES TEL.CO. POLE IN ENERGIZED LINE
- D. TEL. CO. SETS POLE IN HI VOLTAGE ENERGIZED LINE
- E. TEL. CO. REMOVES POLE IN HI VOLTAGE ENERGIZED LINE
- F. LICENSEE'S COST OF JOINT USE ANCHORS

	TOTAL EXPENSE OF OWNER	TOTAL EXPENSE OF LICENSEE	TOV OF THE EXISTING POLE	TOV OF THE NEW POLE	TOV COST OF REMOVAL	1/2 TOV OF THE NEW POLE	LESS 1/2 TOV OF NEW POLE LIKE OLD POLE	LESS TOV OF NEW POLE LIKE OLD POLE	LESS 1/2 TOV OF A NEW STD JU POLE	COST OF TRANSFERRING (SEE PAGE 4)	LESS TOV OF A NEW STD JU POLE	SEE PAGE 4 OF APPENDIX A	LESS TOV SALVAGE VALUE	SALVAGE VALUE IN TOV	1/2 TOV OF ANCHOR	CIAC APPLICABLE Y/N ... See Notes 5 and 6	
28	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	28
29																-	29
30			X		X								X			Y	30
31	X															N	31
32			X	X	X			X					X			Y	32
33			X		X	X	X						X			Y	33
34																-	34
35	X															N	35
36	X															N	36
37				X							X					Y	37
38						X			X							Y	38
39																-	39
40				X												Y	40
41						X										Y	41
42																-	42
43				X				X								Y	43
44			X	X	X			X		X			X			Y	44
45			X	X	X			X		X			X			Y	45
46	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	46
47																-	47
48			X													N	48
49														X		N	49
50												X				N	50
51												X				N	51
52												X				N	52
53												X				N	53
54												X				N	54
55															X	Y	55
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O		

APPENDIX A

TABLE OF VALUES (TOV) CHART
PRESENT VALUE OF POLES (IN YEARS)

POLES	NEW	1-3	4-6	7-9	10-12	13-15	16-18	19-21	22-24	25-27	28-30
25	320	317	312	305	296	285	271	256	240	223	205
30	522	519	513	503	491	475	455	433	408	381	353
35	625	622	614	603	588	569	545	518	488	456	423
40	781	777	767	753	734	710	681	647	610	570	528
45	1,010	1,004	991	974	949	918	881	837	789	737	683
50	1,205	1,198	1,183	1,161	1,133	1,096	1,051	999	941	879	815
55	1,516	1,507	1,488	1,461	1,425	1,378	1,322	1,256	1,184	1,106	1,025
60	2,487	2,472	2,440	2,396	2,337	2,261	2,168	2,061	1,942	1,815	1,682

POLES	NEW	31-33	34-36	37-39	40-42	43-45	46-48	49-51	REMOVAL	0-2 YEARS SAL. CREDIT *
25	320	187	169	152	134	117	99	82	240	60
30	522	325	296	266	237	207	177	147	392	104
35	625	389	354	319	283	248	212	176	469	125
40	781	486	442	398	354	309	265	220	586	156
45	1,010	628	571	515	457	400	342	284	758	202
50	1,205	749	682	614	546	477	408	339	904	241
55	1,516	942	857	772	686	600	514	427	1,137	303
60	2,487	1,545	1,406	1,266	1,126	984	842	700	1,865	497

* SALVAGE CREDIT IS ZERO FOR POLES MORE THAN 2 YEARS OLD EXCEPT WHEN APPLIED IN ACCORDANCE WITH ARTICLE VI. B. IN WHICH CASE NO AGE LIMIT APPLIES.

BILLABLE COST OF JOINT USE ANCHORS

	PLATE	ROD	BILLABLE COST
(A)	8" HELIX	5/8" X 7' TWIN EYE or ¾" X 7' TWIN EYE	$66
(B)	10" HELIX	1" X 7' TWIN EYE or 1" X 7' TRIPLE EYE	$79

APPENDIX A

ANCHORS

When constructing, reconstructing, or replacing joint use facilities, the party installing the poles shall install all anchors (whether joint use or non-joint use) required by both parties and shall render a bill to the other party for the billable cost of the joint use anchors. Any anchors installed by one party for the sole use of the other party shall be billed at two times billable cost defined in this Appendix, and shall become the property of the party for which they were installed.

Replacement of damaged or defective anchors shall be performed by the party owning the joint use anchors and shall be performed at no cost to the other party, provided the replacement is in-kind. If the replacement anchor is larger than the damaged or defective anchor, the owner, upon replacement, may bill the other party the billable cost of the replacement.

PURCHASE OF POLES AS REQUIRED IN ARTICLE VII. E.

The party requesting joint use on poles for which joint use was previously declined may be required to purchase those poles according to the following:

> Billable amount = (TOV of the poles plus the billable cost of anchors) times 1.25.
> Rock hole costs may be added if applicable.

COST OF TRANSFERRING (ACTION SCHEDULE LINE J)

Bill at estimated cost for work being performed.

POWER COMPANY PROVIDES AND INSTALLS POLES FOR TELEPHONE COMPANY

In existing pole lines

1. TOV of poles times 1.25 for work performed during normal working hours.
2. TOV of poles times 1.75 for work performed in emergency during overtime hours.
3. Add rock hole cost if incurred.

POWER COMPANY REMOVES TELEPHONE COMPANY POLE FROM ENERGIZED LINES

(A) Remove pole and leave at job site - TOV of cost of removal

(B) Remove pole and transport to Power Company warehouse - TOV of cost of removal times 1.5

TELEPHONE COMPANY INSTALLS OR REMOVES POLES IN ENERGIZED LINES

(A)	Power Company makes substation breaker or line OCR non-automatic.	$131
(B)	Power Company makes substation breaker or line OCR non-automatic and verify line fuse.	$269

APPENDIX A

POWER COMPANY PROVIDES FACILITIES SO THAT TELEPHONE COMPANY CAN BOND TO POWER COMPANY PAD-MOUNTED EQUIPMENT GROUND

If the Telephone Company provides the Power Company with an approved billing authorization prior to the Power Company starting construction on the project such that this work is done while the Power Company is on the job site as a part of the initial installation of the Power Company underground primary and transformer pad, then the billable cost will be $69 per bond. Otherwise, the billable cost will be determined by a local cost estimate.

NOTES: 1. Rock hole costs
   a. $725 per pole installed in rock.
   b. $251 per joint use anchor installed in rock.
   c. $501 per non-joint use anchor installed in rock

2. Billable costs for rock hole anchors to be used in lieu of (not in addition to) the standard billable cost for anchors.

3. Any hole dug for a pole or an anchor that requires more than 45 minutes to dig; on rear lot lines, any hole requiring a digging bar; and swamp holes, by definition, constitutes "rock hole costs".

4. The fixed billable cost per hole for drilling concrete poles applies when Power Company crews are on site or in the vicinity performing other work. When special trips requiring excess time is necessary, billing may be based upon actual time required.

5. CIAC Tax shall be applied to all items where Column 'P' in the Action Schedule identifies that CIAC is applicable, except:
   - Hwy Relocation jobs where the relocation of facilities is requested by the Federal, State or County governments.
   - Work under Line 20, 40 or 41 to resolve situations involving less than NESC minimum ground clearance.

6. The CIAC Tax applied shall be the current rate of each company and in no case shall exceed the amount of the Company's CIAC Tax liabilities paid to the IRS.

APPENDIX B

This Appendix, effective January 1, 1994, consisting of two (2) pages and two (2) Exhibits hereto, shall be used to determine the annual rental for the years 1994 through 1998 associated with the sharing of costs of owning and maintaining joint use poles. This Appendix shall be made a part of the Joint Use Agreement dated June 1, 1978 and shall supersede and replace the Appendix B which was made effective January 1, 1990.

In each of the years 1994 through 1998, the parties will mutually determine the amount of pole rental owed by each party to the other for the preceding year. The amount of annual rental owed to either party by the other shall be calculated by multiplying the number of joint use poles owned by that party by the appropriate annual rental rate. The party owing the larger amount to the other shall make a payment to the other which is equivalent to the net difference in the two amounts.

The number of joint use poles owned by each party at the end of any year subsequent to 1993 shall be determined by adding the quantities owned at the end of 1993 to the net additions for each of the years subsequent to 1993. Each party shall determine its net additions for each year and shall have the option to do so by informal tally or by estimation. The quantity of joint use poles owned by each party at the end of 1993 is as follows:

South Central Bell	168,705
Alabama Power Company	357,026

Each party's annual rental rate shall be computed annually by the following formula:

$$\text{Rate} = \text{PC} \times \text{LOC} \times \text{SA}$$

where,

PC = Average Embedded Pole Cost
LOC = .227 for both parties
SA = .431 for APCo billing to SCB
SA = .569 for SCB billing to APCo

The limited operating charge (LOC) and the space allocation (SA) factors of the rate calculation for both parties shall remain constant throughout the five year period 1994 - 1998. Exhibits 1 and 2 provide details of the calculation of LOC and SA.

The average embedded pole cost (PC) for each party shall be computed annually based on actual pole cost experience. The computations shall be made by dividing the total investment in distribution wood poles by the total quantity of distribution wood poles. The Telephone Company shall exclude 5% of total investment for pole fixtures since the Telephone Company's accounting process does not permit separation of pole and fixture cost. The Power Company's cost shall be account 364 less pole fixtures and less 32.5% of concrete pole investment. The total investment in distribution wood poles shall include the investment in pole reinforcement, if applicable. Sixty seven and one half per cent (67.5%) of the investment in concrete poles shall also be included in the pole investment, if applicable. This percentage has been determined to be approximately equal to 1.5 times the investment in equivalent wood poles. This percentage shall be reviewed in 1998. Separate calculations of average embedded pole cost (PC) shall be made annually for each party.

Net rental payments will become due on January 1 of each year following a rental year and will become past due on April 16 of each year following a rental year. Interest at a rate equivalent to the weighted average prime rate of AmSouth Bank N.A. will begin to accrue on January 1 and shall be applied to any amounts not paid on or before January 15 following a rental year. Estimated rental payments may be made on or before January 15 to avoid interest accrual. If an estimated payment is made which is later determined to be less than the actual amount owed, interest shall be applied to the differential amount at the above rate. If the estimated payment is in excess of the actual amount owed, a refund will be made with interest, at the above rate, applied to the differential.

During 1998, a mutually conducted joint use pole count shall be performed. The cost of such count shall be shared equally as nearly as possible. Representatives of both companies will determine the exact methodology of the 1998 pole count prior to the end of 1997. If the parties cannot agree on the exact methodology, the count shall utilize the same methodology of sampling and field inspections as was used to perform the 1993 pole count.

A true-up of the net rental owed by either party to the other will be computed based on the results of the 1998 pole count. The true-up will actualize net payments based on number of joint use poles owned by each party. Any variation in joint use pole ownership resulting from the pole count as compared to the annual tallies or estimates will be assumed to be uniform over the five year period. Previously calculated rental rates for each interim year will be used in calculating any true-up rental. No adjustments will be made to any component of the rental rate calculation for any of the interim years.

Any true-up net rental owed by either party to the other which results from the 1998 pole count shall become due on January 1, 1999 and shall become past due on April 16, 1999. Any true-up rental owed by either party shall be subject to interest at a rate equivalent to the weighted average prime rate of AmSouth Bank N.A. Interest shall begin to accrue on January 1 of any year for which additional rental is owed by either party.

Approved:

ALABAMA POWER COMPANY

BY: _____
Manager - T & D Support

DATE: 2-10-95

SOUTH CENTRAL BELL TELEPHONE CO.

BY: _____

DATE: 3/6/95

APPENDIX B
EXHIBIT 1

LIMITED OPERATING CHARGE (LOC)

In the annual rental rate calculation, each party shall use the same numerical value for Limited Operating Charge (LOC). This value is the weighted average, based on pole ownership at the end of 1993, of the individual values of LOC for each party. Each party's individual value of LOC is the sum of the six components listed below:

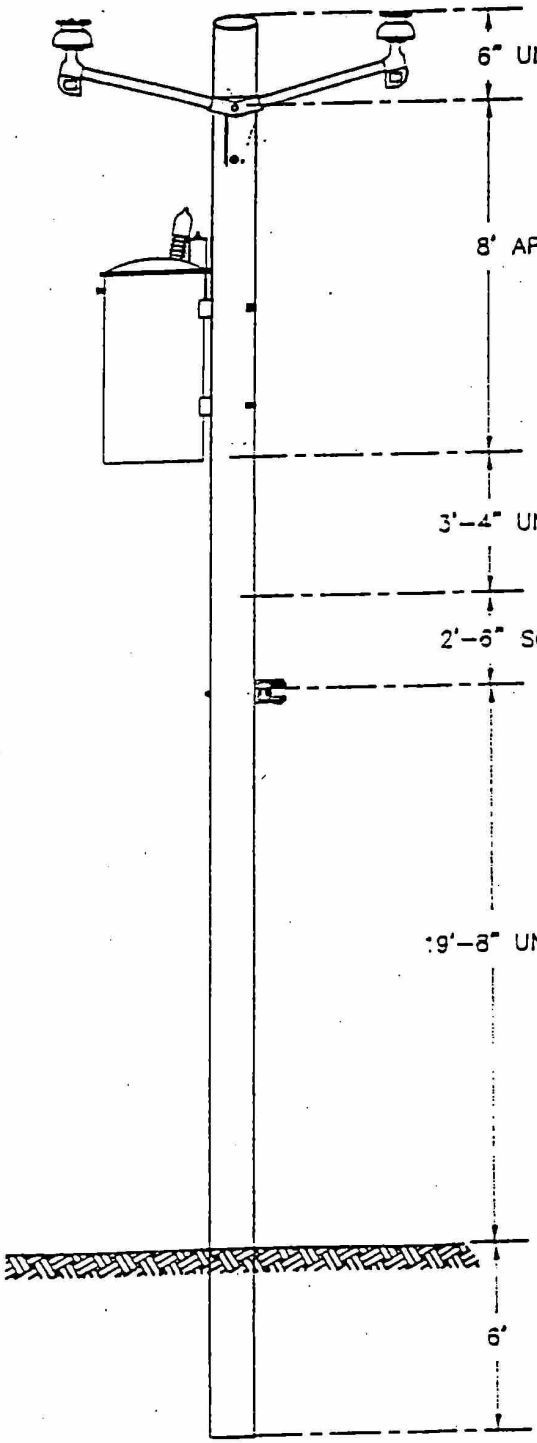
	1993 COMPUTED PERCENTAGE	
	APCO	SCB
Cost of Capital	7.009	6.650
Income Tax	2.736	2.740
Maintenance	5.355	3.300
Depreciation	4.374	4.700
A & G	2.359	1.680
Other Taxes	1.829	1.640
	23.662%	20.710%

Weighted Average = 22.715%, rounded to 22.7% or .227

In summary, the limited operating charge (LOC) shall be 22.7% or 0.227 in the computation of annual rental rate for each company during each of the rental years 1994 through 1998.

APPENDIX B
EXHIBIT 2

POLE SPACE ALLOCATION



APCO SA $= [8' + 1/2(6" + 3'4" + 19'8" + 6")] \times \frac{100\%}{40'}$

$= [96" + 1/2(6" + 40" + 236" + 72")] \times \frac{100\%}{480"}$

$= 56.9\%$

SCB SA $= [2'6" + 1/2(6" + 3'4" + 19'8" + 6")] \times \frac{100\%}{40'}$

$= [30" + 1/2(6" + 40" + 236" + 72")] \times \frac{100\%}{480"}$

$= 43.1\%$

Exhibit 2

Agreement No. PDD-TC-2018-148
Effective Date: March 7, 2018

Pole License Agreement

by and between

Redacted

and

ALABAMA POWER COMPANY

TABLE OF CONTENTS

POLE LICENSE AGREEMENT

THIS AGREEMENT, effective as of this 7th day of ~~February~~ March, 2018, is made by and between Alabama Power Company, ("Licensor"), and Redacted Redacted ("Licensee").

WHEREAS, Licensee proposes to provide telecommunications, cable television, information service and/or other communication services ("Services") in the State of Alabama, and desires to attach and maintain cables, wires and associated equipment owned by Licensee for provision of such Services on Licensor's poles in accordance with the "Act" (as defined below); and

WHEREAS, Licensor is required by the Act, under certain circumstances, to provide mandatory access to its distribution poles to telecommunications carriers and cable television systems; and,

WHEREAS, to fulfill its obligations under the Act, Licensor will allow the installation of Licensee's Attachments (as defined below) on its distribution poles subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. Definitions

i. The term "**Act**" means the Pole Attachment Act, 47 U.S.C. §224, as amended by Section 703 of the Telecommunications Act of 1996, and any future amendments thereto.

ii. The term "**Affiliate**" means an entity that owns, is owned by, or is under common ownership with Licensor or Licensee.

iii. The term "**Attachment**" means overhead cables, wires, and associated equipment or facilities of Licensee that are attached to distribution poles of Licensor in accordance with the terms and conditions of this Agreement. The term "Attachment" does not include, among other things, any wireless antenna and associated equipment, video surveillance equipment, or camera.

iv. The term "**Codes and Laws**" refers collectively to all applicable terms and provisions of the current revision of the National Electrical Safety Code, any successor codes, and all applicable statutes, regulations, ordinances, rules or orders issued by any authority having jurisdiction over Licensor's distribution poles and attachments thereto, including without limitation rules and regulations promulgated by the Occupational Safety and Health Administration.

v. The term "**Communications Space**" means the space on Licensor's poles above minimum ground clearance and below the Communication Worker's Safety Zone (as defined by the NESC) within which Licensee may place its Attachments.

vi. The term "**Contract Year**" means each twelve-month period between July 1 and June 30 that this Agreement is in effect after the first Contract Year. The first Contract Year shall run from the effective date of the Agreement to the following June 30.

vii. The term "**Drop Pole**" means a pole used to support Licensor's service drop conductors.

viii. The term "**Indemnified Parties**" refers to Licensor, its present and future affiliates, and its representatives, agents, officers and employees of each of them. For purposes of this Agreement, the term shall also include any contractor, electric utility or other entity authorized by Licensor to perform work on its poles on its behalf.

ix. The term "**Licensee**" refers to the entity that has been granted access to Licensor's poles under the terms of this Agreement.

x. The term "**Licensee Entities**" refers to Licensee, contractors and subcontractors, and the representatives, agents, officers and employees of each of them.

xi. The term "**Licensor**" refers to Alabama Power Company.

xii. The term "**NESC**" refers to the current revision of the National Electrical Safety Code.

xiii. The term "**Policies and Procedures**" shall refer to Licensor's policies and procedures described in Section 13.

xiv. The term "**Pre-existing Attachment**" refers to Attachments currently owned by Licensee that were installed on Licensor's poles by Licensee or any other entity prior to the execution of this Agreement.

xv. The term "**Post-attachment Inspection**" refers to an inspection by Licensor of Licensee's installation of new Attachments, or modification of Attachments, that have otherwise been approved by Licensor in accordance with this Agreement.

xvi. The term "**Service Drop**" refers to the overhead conductors between the Licensee's existing Attachment and the building or structure being served by Licensee.

xvii. The term "**Specifications**" refers to the specifications for Attachments provided to Licensee by Licensor.

2. Authorized Attachments

a. Licensor hereby grants to Licensee access rights to make Attachments to certain of Licensor's distribution poles in accordance with the terms and conditions hereof and applicable law. Licensee shall provide written notification to Licensor within 30 days after the initial offering

of telecommunications services over any of its Attachments, whether directly or through an affiliate or through a third-party overlasher or lessee.

b. Attachment to Licensor's distribution poles may be made in accordance with the provisions of Sections 3 through 7 below. Under no circumstances is Licensee authorized to attach aerial conduit to Licensor's distribution poles. Licensee is expressly prohibited from placing any Attachment above the Communications Space and from placing any Attachment on transmission poles and facilities of Licensor. For purposes of this Agreement, a transmission pole is one on which an electric power line having voltage of 40kV or higher is attached, including all poles used as guy stub poles for 40kV or higher lines. If the electric line is less than 40kV, it is a distribution line.

c. All Attachments made by Licensee shall be made and maintained at Licensee's sole expense.

d. Licensee acknowledges that the requirements of this Agreement (other than the requirement of requesting to attach), including but not limited to the requirement that all Attachments comply with Codes and Laws and Specifications, shall govern Pre-existing Attachments. Pre-existing Attachments shall be maintained in accordance with the above requirements and specifications that were in effect at the time when the Attachment was made consistent with NESC 013.B.

e. Service Drops shall be installed in accordance with all Codes and Laws and Specifications.

3. Attachment Authorization Procedure

a. Licensee shall make application to Licensor before making or allowing to be made any Attachment or modifications to an Attachment, except in the case of routine maintenance or Service Drops as provided for in subsection (b). Under no circumstances shall Licensee attach any facilities to a distribution pole of Licensor unless Licensee has first: (i) contacted Licensor to obtain a copy of the Policies and Procedures; (ii) submitted an application and a service area map (see Section 6 below) to Licensor that adequately identifies the location of each specific pole to which Licensee intends to attach; (iii) submitted payment of applicable costs including applicable modification costs; and (iv) received authorization to attach from Licensor. Attachments not made in accordance with this Section 3 shall be unauthorized attachments.

b. Service Drops may be attached to service or Drop Poles without prior notification so long as all provision of the Codes and Laws and Specifications are met. All Service Drops attached to service or Drop Poles for which application is not made shall be accumulated by area and submitted monthly with location address to the same Licensor engineering office to which applications for that area are submitted. Licensee shall also submit an application for all such Service Drops along with the itemized listing of Service Drop Attachments.

c. After Licensee has provided the information required in a.(ii) above, Licensor shall make a field inspection of each distribution pole to which Licensee proposes to make its Attachments and shall determine whether modifications of any of Licensor's distribution poles (including without limitation rearrangements of facilities on existing poles) are required to

accommodate the proposed Attachments of Licensee in compliance with Codes and Laws and Specifications and the other requirements contained in this Agreement. Licensor reserves its statutory right under the Act to deny, on a non-discriminatory basis, any Attachment to its distribution poles to the extent allowed by 47 U.S.C. § 224(f)(2) and any applicable law. Any denial shall be in writing, stating the reasons for the denial and setting forth a process of appeal. Licensee reserves its statutory right to contest any denial of access pursuant to 47 U.S.C. § 224 and any applicable law.

d. Within sixty (60) days (unless agreed to otherwise by both parties) after Licensee has provided written notice of attachment or completion of modification, Licensor may perform a Post-attachment Inspection at Licensee's expense. Licensor's election to inspect Attachments is not, and shall not be construed as, the assumption or undertaking of any duty, responsibility or liability on Licensor's part with respect to Licensee or its facilities that is not expressly set forth in this Agreement.

4. Attaching – Modifications Not Required

Following the pre-attachment inspection, Licensor will notify Licensee of the distribution pole lines to which Licensee's Attachments may be made without modifications. Upon payment of all costs identified in the Policies and Procedures, Licensor will notify Licensee that it may proceed with attaching its facilities to such distribution poles. Licensee shall be responsible for making its own Attachments and for performing its own guying and marking for its Attachments to Licensor's distribution poles. Licensee shall install its own anchors and its own guys; Licensee is strictly prohibited from using Licensor's anchors.

5. Attaching - Modifications Required

In cases where Licensee desires to make Attachments on any distribution poles in a pole line of Licensor which Licensor has determined require reasonable modifications to support Licensee's proposed Attachments, Licensor shall notify Licensee of the need for, the nature of, and the cost of such modifications necessary to support the proposed Attachments, as described in Licensor's Policies and Procedures. If the modifications require expanding the capacity of one or more distribution poles, Licensor will also notify Licensee whether Licensor agrees, in its sole discretion, to make the requested modification. Nothing in this Agreement shall in any way be construed as a waiver of Licensor's rights under 47 U.S.C. § 224 or applicable law to deny access for reasons of insufficient capacity, as well as safety, reliability or generally applicable engineering concerns or to deny modification on the grounds that such modifications constitute an expansion of capacity.

If Licensee does not wish to proceed with the modifications after receiving notice, then Licensee will pay Licensor the costs described in the Policies and Procedures. If Licensee does wish to make the proposed Attachments, it shall pay Licensor in advance the work order cost of Licensor to make the modifications. After Licensee has followed these procedures and made payment, Licensor shall make its modifications within a reasonable period of time. After the original work order cost is submitted by Licensor to Licensee, if there are any changes in scope of the work due to changes by Licensee or changes beyond Licensor's reasonable control, Licensor shall submit a revised work order cost to Licensee and Licensee shall pay the revised amount

before the modifications will be made. Costs to be paid by Licensee for modification work shall include, but not be limited to, all those incurred by Licensor in connection with transferring or rearranging facilities to accommodate the attachments of Licensee, including without limitation applicable taxes and overhead costs. Additionally, Licensee will pay the owner or owners of any other facilities attached to said distribution poles for any expense incurred by it or them in transferring or rearranging said facilities. Licensee shall not make Attachment(s) to any pole in the pole line until the necessary agreed-upon modifications to all those poles in the pole line have been completed.

6. Service Area Maps

Licensee is responsible for ensuring that Licensor is provided up-to-date service area maps for all Attachments. With respect to Pre-existing Attachments, Licensee shall provide Licensor with service area maps within 120 days of the date of this Agreement, or such other time period within which the parties mutually agree. In the event Licensee purchases or otherwise acquires the assets of another attacher which include attachments to Licensor's poles, Licensee shall, within sixty (60) days of such purchase, submit service area maps to Licensor. In addition, Licensee shall update such maps as necessary, but no less often than by July 1 of every fourth year.

Licensee shall submit facilities location maps with its applications to install Attachments, in accordance with the Policies and Procedures. Should Licensor provide the maps to Licensee, under the circumstances described in the Policies and Procedures, the amount to be paid by Licensee for the maps shall be as set forth in Exhibit B.

7. Marking of Attachments

Licensee shall mark or tag every Attachment in accordance with the Policies and Procedures and shall maintain marks and tags in readable condition. New attachments shall be marked or tagged at the time they are placed on the pole. All Pre-existing Attachments shall be marked or tagged within one-hundred and eighty (180) days of the date of this Agreement.

8. Coordination with Joint Use Attachments

a. Licensor is a party to joint use agreements with various telephone companies that own poles throughout its service area. Distribution poles used jointly by Licensor and any telephone company under one of the joint use agreements are referred to as "joint use distribution poles", on which each joint use party is allocated certain pole space. Under the joint use agreements the telephone company is allocated the exclusive use of certain space (usually two and one half feet), measured upward from the lowest point of attachment required to provide NESC and/or Alabama Department of Transportation minimum clearance above ground.

b. Licensee's Attachment shall be mounted above the uppermost existing communications cable and shall be separated by the space required by the NESC and Licensor's Specifications. At times there may not be sufficient usable space on a joint use distribution pole for Licensee to place its Attachments within the Communication Space but outside the space allocated exclusively for use by the telephone company. In no event shall Licensee place its Attachments within such allocated space on the joint use distribution pole without proper permission of the party which has been allocated the space. If such permission is granted to

Licensee by the telephone company, and at some later date the party to which the space is allocated needs to utilize the space occupied by Licensee's Attachment, Licensee either shall remove its Attachment or shall pay Licensor's cost to replace the pole or make other required modifications.

9. Coordination with Attachments of other Entities

Where Licensee desires to attach to a pole or poles already hosting attachments of other parties, it is essential that all parties communicate and coordinate (1) to maintain sound engineering practice and construction standards, and (2) for the fair allocation of costs. Corrections of existing safety violations and cost responsibility or sharing for any such corrections will be governed by Sections 5 and 10.

10. Compliance with Codes and Laws

Licensee shall be responsible for knowing and understanding the requirements of the Codes and Laws and the requirements of this Agreement, including (without limitation) the Specifications, and for ensuring that all such requirements are met throughout the term of this Agreement. Should there be any instance in which either the Codes and Laws or the Specifications is more stringent than the other, Licensee shall comply with the more stringent of the two to the extent consistent with Section 013.B of the NESC. Licensee shall periodically inspect its Attachments, including without limitation its guying and other facilities, to assure compliance with the requirements of the Codes and Laws and this Agreement. Licensee shall correct any safety violations that are caused by Licensee within thirty (30) days of Licensee receiving notice of such violations (or such longer period agreed to by Licensor), except for such violations creating a danger to persons or property, which must be corrected immediately upon discovery. Should Licensee fail to do so, Licensor may cure the non-compliance, and Licensee shall pay Licensor the costs of its doing so To the extent that the cause of a violation cannot be established, then the cost of correcting the violation shall be shared by each attacher on the pole (including the Licensor and any joint user) whose facilities are involved in the violation at issue. Failure by Licensee to comply with the Codes and Laws and the requirements of this Agreement shall constitute a default of this Agreement.

11. Licensor's Right to Inspect

a. Licensor shall have the right, but shall not be obligated, to inspect each Attachment made by Licensee on its distribution poles subsequent to the date of this Agreement and to make periodic inspections of any of Licensee's Attachments for any reason, including (without limitation) identifying violations of the NESC or the Specifications and of any other generally applicable safety codes, and identifying unauthorized attachments, but not for any purpose of or reserved right of controlling the methods and manner of the performance of Licensee's business activities. Licensor's election to inspect Attachments is not, and shall not be construed as, the assumption or undertaking of any duty, responsibility or liability on Licensor's part with respect to Licensee or its facilities that is not expressly set forth in this Agreement. Any costs Licensor incurs for periodic inspections shall be recovered under the annual attachment fees assessed under Sections 20 and 22. Licensee shall pay for special inspections in accordance with Exhibit E. Licensor's right to make periodic inspections and any other inspection made pursuant to such right

shall not relieve Licensee of any responsibility, obligation, or liability imposed by law or assumed under this Agreement. Special inspections shall be handled in accordance with Exhibit E.

b. From time to time, Licensor or its contractor may inspect poles to which Licensee is attached, and may place tags or other markings on such poles indicating the condition of the pole and/or whether the pole is safe to climb. LICENSEE SHALL INFORM ITS EMPLOYEES AND CONTRACTORS OF THE MEANING OF SUCH TAGS OR OTHER MARKINGS. Licensor's election to inspect any pole is not, and shall not be construed as, the assumption or undertaking of any duty, responsibility or liability on Licensor's part with respect to Licensee or its facilities that is not expressly set forth in this Agreement. The placement of an inspection tag or other marking, or lack thereof, on a pole shall not relieve Licensee of its responsibility to determine for itself whether any particular pole is safe for climbing.

12. Reservation of Poles by Licensor

a. Licensor reserves the right to identify, pursuant to a bona fide business plan, specific distribution poles for which Licensor projects a need for space in the provision of its core utility service. At the time of Licensee's pole attachment request, Licensor shall notify Licensee if any of the requested poles are reserved for Licensor's exclusive use. Licensee reserves its right to challenge Licensor's reservation of space consistent with applicable law.

b. Licensor shall allow Licensee to install Attachment(s) on such distribution poles until such time as Licensor notifies Licensee of its need for those poles. Licensee acknowledges that Licensor's need to use such distribution poles may arise on an emergency basis, for which Licensor's need is immediate.

c. Licensor will provide sixty (60) days prior electronic or other written notification of its need for the reserved poles unless such notice is impractical under the circumstances, in which case Licensor will notify Licensee as soon as reasonably practicable, and Licensee shall remove its Attachments from the reserved distribution poles within the time required by Licensor or within such other time as the parties agree. Alternatively, Licensor may remove the Attachments and Licensee shall reimburse Licensor's costs of doing so.

13. Compliance with Licensor's Policies and Procedures

Licensee shall comply with all Policies and Procedures applicable to Licensee's Attachments which are currently in force or subsequently established by Licensor at any time during the term of this Agreement, including (without limitation) Policies and Procedures to implement and allocate modification billing and to provide for an orderly process of attachment in the event that Licensee and one or more other parties desire to attach to the same distribution poles. Notwithstanding the above, any changes to the Policies and Procedures shall not be applied retroactively with regard to Licensee's existing attachments and shall not apply to the cost schedule without Licensee's consent. In the event of a conflict between the Policies and Procedures and the terms of this Agreement, the terms of this Agreement shall control. Licensor shall provide 60 days' notice to Licensee of any subsequent change to Licensor's Policies and Procedures.

14. Pre-Construction, Replacement and Modification Notification by Licensor

Licensor will endeavor to provide to Licensee such prior notification by electronic mail or other written notice of planned new construction of distribution poles to which Licensee is not attached as may be reasonable under the circumstances. However, the continuing practice of providing written notifications shall not constitute an obligation on the part of Licensor to provide such notifications. Licensor will provide sixty (60) days prior electronic mail or other written notification to Licensee (unless such notice is impractical under the circumstances, in which case Licensor will notify Licensee as soon as reasonably practicable) of planned replacement or modification (other than routine maintenance) of any distribution poles to which Licensee is attached, provided that Licensee has marked or otherwise placed identification on such Attachments which will allow Licensor to ascertain the identity of the owner of the Attachments. Notwithstanding the provisions of this Section 14, Licensor reserves the right to decide not to construct, reconstruct or modify any distribution poles. Licensee reserves the right to challenge any such decision consistent with applicable law. Should such decision be made after Licensee has paid amounts for additional capacity, such amounts shall be reimbursed to Licensee.

15. Transfers of Licensee's Attachments

a. Whenever Licensor has need to replace, during routine maintenance or modification in response to emergencies, any of its distribution poles to which an Attachment of Licensee is attached, Licensor shall have the right, but shall not in any way be obligated, to transfer the Attachments of Licensee from the replaced distribution pole to the replacement distribution pole. It is intended that transfers of Licensee's Attachments by Licensor will be limited to cables and service drops which are attached to distribution poles by tangent or dead-end type construction and for which the transfer can be accomplished without the requirement to cut or splice the cables or service drops. Down guys may also be transferred by Licensor, at its discretion.

b. Licensor shall not be required to provide advance notification to Licensee for the above-described transfer of Licensee's Attachment(s) by Licensor and such transfers may be performed by Licensor at its sole discretion.

c. . Whenever Licensor needs to have Licensee remove its attachments from a distribution pole in a situation where a pole or entire pole line is being relocated or removed such that a transfer is not feasible, Licensor will so notify Licensee. Licensor will provide sixty (60) days' prior electronic or other written notification of its need for the poles under these circumstances unless such notice is impractical under the circumstances, in which case Licensor will notify Licensee as soon as reasonably practicable, and Licensee shall remove its Attachments from the distribution poles within the time required by Licensor or within such other time as the parties agree. When Licensor notifies Licensee that recovery of the distribution pole is for an emergency use, Licensee shall immediately remove its Attachments affected by Licensor's emergency. Alternatively, Licensor may remove the Attachments and Licensee shall reimburse Licensor's costs of doing so.

d. Licensee shall pay, on receipt of invoice, to Licensor the amount stated in Exhibit B for each pole on which such transfer or transfers of Attachments are made by Licensor during the initial year this Agreement is in effect. After the initial year of this Agreement, this fee may be

reviewed annually and may be adjusted upward or downward to more accurately reflect Licensor's actual cost of making such transfers, but any increases shall not exceed increases consistent with the Handy-Whitman Index, South Atlantic Region (FERC Account 364: Poles, Towers & Fixtures), unless otherwise agreed upon by the parties. Without limiting the foregoing provisions of this Section 15, Licensee shall, at any time, at its own expense, within thirty (30) days of the date of electronic or other written notice from Licensor, remove, relocate, replace or renew its Attachments placed on said poles, or transfer them to substituted distribution poles or perform any work in connection with said Attachments that may be required by Licensor. Should Licensee fail to do so and such failure causes Licensor to incur expense or liability, Licensee shall reimburse any such expense and shall indemnify and hold harmless the Indemnified Parties against any damages or liability arising out of such failure. In the event Licensee fails to so remove, relocate, replace, renew, or transfer its Attachments within thirty (30) days of the date of such notice, Licensor may at its option itself or by contract with others remove, relocate, replace, renew, or transfer such Attachments, although Licensor is not required to do so, and Licensee shall be liable for the per-pole transfer cost for such work.

e. In the event of a storm or other emergency in which Licensor is performing work on its facilities for such reasons as restoration of electric service to its customers or safety, Licensor shall have the right, but not the obligation, in connection with the repair of its own facilities, to repair any Attachments of Licensee, and Licensee shall reimburse Licensor for the cost incurred by Licensor in making such repairs to Licensee's Attachments.

16. NJUNS

The parties recognize that improved coordination of activities such as pole attachments and pole attachment transfers by pole owners and pole attachers is to the benefit of all parties, and that Licensee's and Licensor's participation in the National Joint Utilities Notification System ("NJUNS"), a Web-based system developed for the purpose of improving the coordination of such joint activities, would improve their respective operations under this Agreement. Licensee will join NJUNS within 30 days of the execution of this Agreement and, during the term of this Agreement, will actively participate by entering field information into the NJUNS system within the times required by the system. Should Licensee fail to actively participate in NJUNS and should such failure cause Licensor to incur expense or liability to others, Licensee shall reimburse Licensor its expense and indemnify and hold harmless the Indemnified Parties from any damages or liability arising out of such failure.

17. Non-Reimbursed Reconstruction

In the event any third party entity necessitates the reconstruction of an existing pole or pole line where there is no reimbursement of cost from such third party to Licensor, Licensor shall pay the cost of replacing a like number of poles of like kind. In the event additional poles are required to complete the new pole line, Licensor will treat each such additional pole as new construction, and any requirements for pole height beyond what is required to meet Licensor's needs shall be billed to Licensee.

18. Interruption of Licensee's Service

Licensor reserves the right to maintain its distribution poles and to operate its facilities in such manner as will best enable it to fulfill its own service requirements. Licensor shall not be liable to Licensee for any interruptions to Licensee's service or for interference, however caused, with Licensee's operation of its cables, wires and equipment, or for damage to Licensee's facilities, arising out of the use of Licensor's distribution poles, except that Licensor shall be liable for damage caused solely by its wanton or willful wrongful act. Licensor also shall not be liable for any such interruption, interference or damage caused by its contractors or by any joint user or other attacher.

19. Licensee's Right-of-Way Obligations

Licensee shall, before installing any Attachment to Licensor's distribution poles or placing any anchors in connection therewith, secure any required permission or consent from federal, state, county, or municipal authorities, or from owners of property upon which the distribution poles may be located, to install and maintain Licensee's Attachments thereon. Licensee shall not infer any such permission or consent from Licensor from this Agreement.

20. Annual Attachment Fees

a. Licensee shall pay annual attachment fees to Licensor for each Attachment to distribution poles under this Agreement. Licensor shall send annual statements to Licensee notifying Licensee of the amounts it owes for Attachments for such Contract Year, and Licensee shall pay the corresponding amount. The amount of the annual attachment fee to be invoiced by Licensor shall be calculated in accordance with the formulas set forth in Exhibit A, attached hereto and made a part hereof.

b. The formulas set forth in Exhibit A are based on the FCC formulas for cable television and telecommunications attachments. There may be circumstances under which Licensor is entitled to a fee other than or in addition to the FCC rate. Licensor reserves its rights to charge and collect a per-Attachment fee that is higher than the FCC rate should Licensor determine that these circumstances are present on or after Licensor gives notice of its intent to charge such higher fee under paragraph (c) below. No action or inaction of Licensor shall constitute a waiver of Licensor's right to assert that it is lawfully entitled to collect such a higher fee and Licensor expressly reserves such right. No action or inaction on the part of Licensee shall constitute a waiver of the Licensee's right to dispute the existence of any alleged circumstances or the right to challenge the amount of any fee other than the FCC rate and Licensee expressly reserves such rights.

c. Licensor may revise the per-Attachment fees set forth in Exhibit A at any time without the necessity of an amendment to this Agreement; provided, however, that Licensor shall give Licensee at least sixty (60) days' written notice of any increase in the per-Attachment fee, whether such increase is consistent or inconsistent with the rate calculation in Exhibit A or pursuant to the circumstances described in paragraph (b) above. Neither party waives any of its legal rights, remedies, arguments or positions arising under the Act or otherwise with respect to any rate change or increase.

21. Periodic Field Counts

a. The number of Attachments to Licensor's distribution poles for which Licensee will pay attachment fees to Licensor will be determined by actual field count or alternative methods as set forth in this section. Any Service Drop that is within twelve inches (12") of Licensee's other Attachments on a pole (consistent with applicable Codes and Laws) shall be counted as one Attachment for billing purposes. Licensor reserves the right to perform the field count with its employees or to contract the performance of the field count to an outside party. Licensee will be provided reasonable notice (not less than thirty (30) days, unless otherwise agreed upon) and given the opportunity to accompany Licensor or its contractor and to participate in the field count. Both the Licensee and the Licensor have a responsibility and an opportunity to participate in the field counts so that accuracy may be determined at the time of the field count. If the Licensee elects not to have its personnel participate in the actual field count, it shall so notify Licensor in writing, and it shall, prior to the scheduled beginning date of the field count, provide a written statement of its intent to accept the field count results as determined by the Licensor. Whether or not Licensee gives such written notice to Licensor, Licensee shall, on receipt of invoice, reimburse Licensor its cost, including without limitation applicable taxes and overhead to perform the field count, and Licensee shall in any event abide by the field count results as determined by Licensor.

b. Licensee shall indicate agreement with the field count results by having its representative at the field count sign the counter's summary sheet of all pole count documentation immediately following completion of the field count. At the time an invoice is submitted to Licensee for the field count, the summary sheets, and summary maps, if used, shall be provided in support of the count to enable Licensee to verify the accuracy of the count.

c. Should Licensor in the future adopt a process pursuant to which one or more third parties' attachments are counted in the same field count as Licensee's Attachments, the cost of the count will be allocated pro rata among Licensee and the third parties whose attachments are counted.

d. Licensor may at any time competitively bid a field count or utilize for the field count any contractor that it has used for such work in a prior field count. Should Licensor decide in its sole discretion to use a previously-hired contractor, and if that contractor's rates per pole quoted for the current field count have increased from the contractor's previous rates by a percentage greater than the percentage of cost increase identified in the Handy Whitman Index, South Atlantic Region (FERC Account 364: Poles, Towers & Fixtures), then Licensor shall have the option of either utilizing that contractor and absorbing that amount of the contractor's charges that exceed the Handy Whitman Index percentage increase or selecting a contractor by competitive bid. Should Licensor elect to use the competitive bid process, it shall provide Licensee the opportunity to submit the names of potential contractors for consideration in the bidding process.

e. A field count of Licensee's Attachments will be performed at various times (normally on a four-year interval). If Licensor elects to conduct periodic field counts more frequently than on a four-year cycle, it shall bear the cost of such additional field counts. However, if any such count is for the purpose of settling a dispute or in connection with an assignment issue, Licensee shall pay for the cost of such count. The year of the first field count to be performed under this provision will be determined by Licensor but will occur during the first four (4) years

after the effective date of this Agreement. For Contract Years for which no actual field count is performed, the number of Attachments will be determined by Licensor based on previous counts or existing records, including applications and maps furnished by Licensee. Upon the performance of an actual field count, adjustments will be made, if appropriate, to the attachment fee amounts for those Contract Years for which an actual field count was not performed. The undocumented attachments reflected in the actual field count shall be deemed unauthorized attachments, and such adjustments will be made in accordance with Section 23.

f. As an alternative to performance of the actual field count described herein, the parties may use existing maps, geographic information systems ("GIS"), and/or Attachment records; provided, however, that such maps, GIS, or records exist and provided that each party agrees that results with reasonable accuracy can be achieved. The results of attachment counts performed in this alternative manner shall be treated, for Annual Fee purposes, as if they were determined by actual count.

22. Fee Payments

a. Attachment fees are payable in advance at the beginning of each Contract Year, upon receipt of an invoice. The annual fees to be billed on each such invoice shall be determined by multiplying the appropriate annual fee per-Attachment for that Contract Year as described in Section 20 above by the number of Attachments as determined by actual field count or by procedures described in Section 21 above.

b. For Attachments made during a Contract Year, Licensee shall pay the full per Attachment annual fee for that year, which amount shall be included on Licensee's annual attachment fee invoice for the following Contract Year.

c. Payment of all invoice amounts (including annual attachment fees, transfer fees and any other amounts due under the Agreement) shall be due upon receipt of the invoice and those not paid within forty-five (45) days after receipt shall be subject to interest from its due date to date of payment at a rate equal to the highest prime rate quoted in the Money Rates Section of the Wall Street Journal on the 45th day from the date of the invoice, plus five percentage points (5%), or the maximum rate of interest allowed by law, whichever is less (the "Interest Rate"), for each month or portion thereof that the payment is late. If for any reason attachments for which fees are paid in advance hereunder cease to exist or cease to be the property of Licensee, no portion of said fee shall be refundable. No portion of any fee shall be prorated. Failure to pay fees, expenses or any other charges under this Agreement within forty-five (45) days after presentation of the invoice or on the specified payment date, whichever is later, shall constitute a default of this Agreement.

23. Unauthorized Attachments

a. Except for those attachments for which this Agreement expressly states Licensor's grant of access is not required, the attachment of any cable, wire, appliance, equipment or facility to any pole, equipment, or facility owned or controlled by Licensor, or the use of such attachment for the provision of services/capabilities, which is not authorized by the terms of this Agreement, shall be deemed an unauthorized attachment and shall constitute a default of this Agreement. Licensee acknowledges that Licensor may not reasonably ascertain the date or the year in which

an unauthorized attachment may be made, and Licensee agrees that each such unauthorized attachment shall be presumed to have existed for a period of four (4) years prior to its discovery. This presumption may be rebutted by documentation establishing, to Licensor's reasonable satisfaction, the actual date of attachment. With respect to all such unauthorized attachments, within forty-five (45) days of demand by Licensor, Licensee shall pay to Licensor in a lump sum, plus interest at the Interest Rate (as defined in Section 22.b.), applicable attachment fees retroactive to the presumed date of unauthorized attachment. In the event Licensee has a bona fide claim that one or more attachments are not unauthorized, Licensee shall pay the undisputed amount of retroactive attachment fees, plus interest at the Interest Rate, within the above 45-day period and shall within such period identify in writing the specific poles, including without limitation the location of same (where practicable) that are the subject of the dispute, and shall submit within such period its reasons as to why each attachment is not unauthorized. Within 45 days after the dispute is resolved and an invoice rendered, Licensee shall pay for the unauthorized attachments no longer in dispute the applicable attachment fees in lump sum, plus interest at the Interest Rate, retroactive to the presumed date of unauthorized attachment.

b. In addition to the retroactive Attachment fees specified in paragraph 23.a, Licensee shall pay as a penalty fee the amount of fifty dollars ($50) per unauthorized attachment, whether discovered in a field count or otherwise. The parties agree that no unauthorized attachment penalties shall apply for the first 2% of any variance identified in a field count as measured against existing records.

c. No act or failure to act by Licensor with regard to unauthorized attachments shall constitute a ratification of such attachments. In addition to payment of amounts as specified in this paragraph, Licensee shall submit an application for attachment within 30 days of notification that the unauthorized attachment has been discovered.

24. Damage to Licensor's Facilities Caused by Licensee

In conducting its operations under this Agreement, Licensee shall avoid causing damage to facilities of Licensor or of other parties attached to poles, equipment, or any other facilities of Licensor, and Licensee hereby assumes full responsibility for all such damage caused by it or its contractors. Licensee shall make an immediate report to the Licensor or to the other party in the event that such damage occurs and the Licensee hereby agrees to reimburse the Licensor or other party for the expense of making repairs.

25. Responsibilities Associated with Licensee's Work on Poles of the Licensor

a. With respect to the installation of its Attachments to Licensor's distribution poles or other work undertaken by Licensee pursuant to this Agreement, Licensee shall be solely responsible for ensuring that all work is performed in accordance with the requirements of this Agreement, the NESC, and other applicable Codes and Laws. Licensor shall not exercise any control over the manner in which such work is performed. Licensee shall not cause or permit any person, other than a qualified and authorized worker who knows and appreciates the character of electricity and the danger of working in proximity to wires and other electric distribution facilities which are or may be energized with electricity at the various voltages used in supplying electricity for public use, to climb any pole, or to work upon any of Licensee's cable, wire, appliance,

equipment or facility attached to any pole, equipment, or facility owned or controlled by Licensor; and, as to any such person as may be authorized or permitted by Licensee to climb any such pole or to perform any such work, it shall not be Licensor's responsibility to warn him of the danger involved in working or being close to Licensor's wires and facilities, nor to provide supervision over the work being done by such person at any time. Before any person performs any work for Licensee on or near any poles, equipment or facilities owned or occupied by Licensor, Licensee must adequately warn such person of the dangers inherent in making contact with the electrical conductors of Licensor and of failing to maintain the distance from such conductors required by the Codes and Laws. IN NO EVENT SHALL A LICENSEE REPRESENTATIVE CLIMB OR WORK ABOVE THE COMMUNICATION SPACE ON THE POLE.

b. Prior to its employees or contractors climbing or performing other work on any Licensor poles, Licensee shall determine for itself whether such pole is safe to climb or safe for the performance of other work on or near the pole. As set forth in paragraph 11.b above, Licensor or its contractor may from time to time inspect poles to which Licensee is attached, and may place tags or other markings on such poles indicating the condition of the pole and/or whether the pole is safe to climb. LICENSEE SHALL INFORM ITS EMPLOYEES AND CONTRACTORS OF THE MEANING OF SUCH TAGS OR OTHER MARKINGS. Licensor's election to inspect any pole is not, and shall not be construed as, the assumption or undertaking of any duty, responsibility or liability on Licensor's part with respect to Licensee or its facilities that is not expressly set forth in this Agreement. The placement of an inspection tag or other marking, or lack thereof, on a pole shall not relieve Licensee of its responsibility to determine for itself whether any particular pole is safe for climbing or other work.

26. Indemnification

a. The use of Licensor's distribution poles as provided for in this Agreement is not for the benefit of Licensor; rather, it is solely for the benefit of Licensee in carrying on its business of supplying the services authorized herein; and it is understood that the hazards of electricity transmitted at voltages necessary for public use over Licensor's facilities may be increased by the existence of any of Licensee's cables, wires, appliances, equipment or facilities which may be attached to Licensor's distribution poles, equipment, or facilities; and this Agreement is entered into with the explicit understanding that, except as set forth below, Licensee assumes sole responsibility and liability for all injuries and damages arising, or claimed to have arisen, by, through or as a result of any of its cables, wires, appliances, equipment or facilities (or of a third-party overlasher to Licensee's cables, wires, appliances, equipment or facilities) attached to Licensor's poles, equipment, or facilities, it being understood, however, that Licensee shall have no liability for injuries and damages (a) caused by, through or as a result of the sole negligence of Licensor or its contractors; or (b) caused by, through or as a result of the willful or wanton misconduct of Licensor or its contractors; or (c) caused solely by, through or as a result of the facilities or activities of any third party (or parties) whose cables, wires, appliances, equipment or facilities are attached to the same poles as Licensee's cables, wires, appliances, equipment or facilities.

b. Accordingly, without limiting the effect of the provision of the immediately preceding paragraph, and except as set forth below, Licensee expressly agrees to indemnify, defend and save harmless Licensor and the Indemnified Parties from all liability, claims, demands,

actions, judgments, loss, costs and expenses (collectively, "Claims") arising or claimed to have arisen by, through or as a result of any of Licensee's cables, wires, appliances, equipment or facilities attached to Licensor's poles, equipment, or facilities, arising out of the breach of the representations and warranties of Licensee hereunder, or as a result of the acts or omissions of any of the Licensee Entities, in respect to (a) damage to or loss of property (including but not limited to property of Licensor or Licensee); (b) injuries or death to persons (including but not limited to injury to or death of any Licensee Entities or members of the public); (c) any interference with the television or radio reception of, or with the transmission or receipt of telecommunications by, any person which may be occasioned by the installation or operation of Licensee's cables, wires, appliances, equipment or facilities; (d) the proximity of Licensee's cables, wires, appliances, equipment or facilities to the wires and other facilities of Licensor; (e) any claims upon Licensor for additional compensation for use of its distribution rights-of-way for an additional use; and (f) any injuries sustained and/or occupational diseases contracted by any of the Licensee Entities of such nature and arising under such circumstances as to create liability therefor by Licensee or Licensor under the Alabama Workers' Compensation Act and all amendments thereto, including also all claims and causes of actions of any character which any such employees, the employers of such employees, and all persons or concerns claiming by, under or through them or either of them may have or claim to have against Licensor resulting from or in any manner growing out of any such injuries sustained or occupational diseases contracted; it being understood, however, that Licensee shall have no liability for injuries and damages (a) caused by, through or as a result of the sole negligence of Licensor or its contractors; or (b) caused by, through or as a result of the willful or wanton misconduct of Licensor or its contractors; or (c) caused solely by, through or as a result of the facilities or activities of any third party (or parties) whose cables, wires, appliances, equipment or facilities are attached to the same poles as Licensee's cables, wires, appliances, equipment or facilities. In any matter in which Licensee shall be required to indemnify Licensor hereunder, Licensee shall control the defense of such matter in all respects, and Licensor may participate, at its sole cost, in such defense. Licensor shall not settle or compromise any matter in which Licensee is required to indemnify Licensor without the prior written consent of Licensee. Licensor shall seek indemnification from each attacher or joint user involved in causing any Claims against Licensor on a non-discriminatory basis.

27. Licensee's Insurance Requirements

a. Licensee shall obtain and maintain during the term of this Agreement, as long as Licensee's Attachments remain on Licensor's poles, and for a period of two (2) years after removal of Licensee's Attachments, insurance providing at a minimum the coverages and limits set forth in Exhibit C.

b. Licensee, by signing this Agreement waives, and will require its insurers to issue an endorsement to the above policy or policies to waive, all rights of subrogation against Licensor with respect to any claim or loss payable or paid under each of the above policies. Licensee shall cause its insurers to include Licensor as an Additional Insured, as their interest may appear under this Agreement, on the policies set forth above, except for the workmen's compensation and employer's liability. The company or companies issuing such insurance shall be licensed, authorized or permitted to do business in the State of Alabama, acceptable to Licensor, and shall have an A.M. Best's rating of AIII or better (or equivalent).